

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
BRIEF**



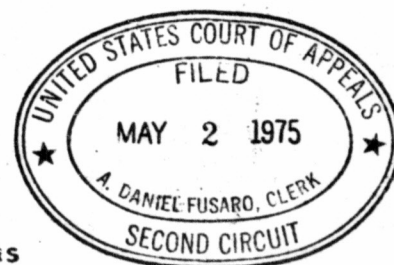


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United States of America

vs. 74 Cr. 159

Philip Stoller and Martin Frank

New York, New York.  
September 23, 1974 - 10:30 A.M.

(Trial resumed.)

(In the robing room.)

MR. GOULD: Good morning, your Honor.

MR. SORKIN: Good morning, Judge.

THE COURT: Do we really have to hear whatever this  
is now?

MR. SORKIN: I just said we could take it up  
some time with the Judge in chambers.

THE COURT: I understood from Mr. Bowes that we  
were going to have it.

MR. SORKIN: We can wait, your Honor.

THE COURT: I have a thing about early morning  
coffee chats, pleasant as they may be.

(Pause.)

THE COURT: All right, gentlemen, let's all file  
out and bring the jury in.

(In open court; jury present.)

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Feeney-direct

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2 THE COURT: Good morning, ladies and gentlemen,  
3 on this nice fall day.

4 Is there any more cross examination of Mrs.  
5 Allen?

6 MR. FELDSHUH: No cross by me, your Honor.

7 MR. GOULD: I have nothing, your Honor.

8 THE COURT: Mr. Sorkin.

9 MR. SORKIN: Nothing, your Honor.

10 We call as our next witness James Feeney.

11 J A M E S W. F E E N E Y, called as a witness by the  
12 Government, having been first duly sworn, was examined  
13 and testified as follows:

14 MR. SORKIN: May I proceed, your Honor?

15 THE COURT: Yes.

16 DIRECT EXAMINATION

17 BY MR. SORKIN:

18 Q Mr. Feeney, please keep your voice up.

19 A Yes, sir.

20 Q Mr. Feeney, let me direct your attention to 1969,  
21 January 1969. Did you hear of a company called Training  
22 With the Pros?

23 A Yes.

24 Q Had you heard of the company prior to that?

25

1 qb

Feeney-direct

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2 MR. GOULD: I object to that question.

3 Q When did you first hear of the company?

4 MR. GOULD: I object to that. That is not the  
5 way to elicit a conversation.

6 THE COURT: I am inclined to agree because I  
7 think, first of all, we ought to know what he was doing  
8 whenever it is you want to ask him these questions about.

9 MR. SORKIN: Yes, sir.

10 Q Mr. Feeney, when for the first time did you hear --

11 THE COURT: No, Mr. Sorkin. That is precisely  
12 what we don't want. We haven't heard a word from the witness.  
13 We don't know who he is. We can guess, I agree, but I don't  
14 think we ought to guess.

15 Q Did there come a time when you had a conversation  
16 in 1968 with a gentlemen by the name of Ramon D'Onofrio?

17 A Yes.

18 Q Where was the conversation?

19 A I believe it was at my home or his home.

20 Q Can you fix the date a little better, please?

21 A Yes, sir. It would be the latter part of 1968.  
22 It was the end of 1968.

23 Q Please keep your voice up. Was anyone else  
24 present?  
25

1 qb Feeney-direct 1232

2 A Yes, I believe that Mrs. Muriel Barter and my  
3 wife were present at the same time.

4 Q Did you have a conversation with Mr. D'Onofrio?

5 A Yes, I did.

6 Q Tell us, please, Mr. Feeney, what you said to  
7 Mr. D'Onofrio and what Mr. D'Onofrio said to you?

8 MR. GOULD: At this point, in view of the partici-  
9 pants in the conversation, can I make the point that it is  
10 being taken subject to the establishment of the conspiracy  
11 count?

12 THE COURT: Yes. This will be received subject  
13 to connection under Count 1.

14 MR. FELDSHUH: As to both defendants, your Honor.

15 THE COURT: Correct.

16 Q Go ahead, Mr. Feeney, tell us the conversation.

17 A Mr. D'Onofrio told me that he was going to help  
18 in an underwriting, a sell of underwriting of a company  
19 called Training With the Pros. I had had some familiarity  
20 with the company. I had known a little bit about the back-  
21 ground of the company.

22 MR. GOULD: I move to strike it out.

23 THE COURT: Yes, the business about his background  
24 will be stricken. We are only asking for conversations.

25 Go ahead, Mr. Sorkin.

2 Q Tell us the rest of the conversation, Mr. Feeney.

3 A Mr. D'Onofrio asked me if I would be interested  
4 in purchasing some shares of stock in this company as  
5 part of the initial offering. He told me about how he was  
6 going to do the underwriting.

7 MR. GOULD: I move to strike it out.

8 Q Just tell us what he said, Mr. Feeney.

9 A Mr. D'Onofrio told me that he was going to do a  
10 sell of underwriting on the company and that under the sell  
11 of underwriting he would make arrangements or he would take  
12 the place of a brokerage house. What he would do is he  
13 would go out and actively solicit people to purchase the  
14 initial shares of stock in the company and he asked me if  
15 I would be one of those participants.

16 Q Did you say anything?

17 A Yes, I told him I would. I told him I would  
18 buy 1000 shares of stock.

19 Q Did there come a time, Mr. Feeney, when the name  
20 Warren Bundy came up in conversation?

21 A Yes, it was either in that conversation or a sub-  
22 sequent conversation, but all in and around the same ti me.

23 Q Where was the conversation?

24 A The conversation, again, was either at my home  
25 or Mr. D'Onofrio's. I don't remember.

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Q Was anyone else present? That is, when the name  
Warren Bundy came up.

A I don't remember if anybody else was present.

Q Tell us, please, Mr. Feeney, what Mr. D'Onofrio  
said and what you said?

MR. GOULD: Before that, can we get a date,  
your Honor, and some better illumination as to the partici-  
pants of the conversation?

End 10



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2 THE COURT: As I understand it, he can't remember  
3 if anyone else was present except D'Onofrio himself, is  
4 that correct, Mr. Feeney?

5 THE WITNESS: Yes, sir.

6 THE COURT: Can you give us a month?

7 THE WITNESS: Just to clarify so the gentleman  
8 will understand. I don't believe that the women were  
9 sitting in at every minute of the conversation. They  
10 probably went out to the kitchen or something like that.  
11 That is what I am trying to say. I don't know if anybody  
12 else was sitting there.

13 THE COURT: Can you give us a month? You say  
14 late 1968. Do you mean November, December?

15 THE WITNESS: I would say the end of November or  
16 early December.

17 THE COURT: All right.

18 Q I asked you, Mr. Feeney, if the name Warren Bundy  
19 came up in the conversation and tell us please what you  
20 said and what Mr. D'Onofrio said?

21 A Mr. D'Onofrio asked me if I had other people  
22 who would be interested in buying shares of stock in the  
23 company. On a previous occasion he had met my uncle,  
24 Mr. Warren Bundy. He asked me if Mr. Bundy would be  
25 interested in a proposition whereby Mr. D'Onofrio would

1 jgrf 2

Feeney-direct

2 put up all the money for the purchase of 1,000 shares of  
3 stock in Training With The Pros in my uncle's name. My  
4 uncle would receive a commission or a participation of  
5 profits on the sale of the stock when it was ultimately  
6 sold. I told him I would check it out with my uncle and  
7 see if he was interested.

8 Q Mr. Feeney, when was the next time you had a  
9 conversation with Mr. D'Onofrio?

10 A I spoke to Mr. D'Onofrio on a regular basis but  
11 in reference to this particular subject I would say it was  
12 within a week or so. I talked with D'Onofrio again.

13 Q Where was this conversation?

14 A I am sure that this was at his house.

15 Q Tell us, please, if anyone else was present.

16 A Mrs. Muriel Barter and her son Scott Barter were  
17 there.

18 Q Tell us, please, what was said, Mr. Feeney, by  
19 you and by Mr. D'Onofrio.

20 A I told Mr. D'Onofrio that my uncle would take the  
21 1,000 shares of stock. I asked him just exactly what he was  
22 going to do and how he was going to do the underwriting.  
23 I wanted to see just how much participation was being  
24 done on behalf of other people. Mr. D'Onofrio --

25 MR. GOULD: I move to strike that out as to what

1 jgrf 3 Feeney-direct

2 he wanted to see.

3 THE COURT: Yes, Mr. Feeney, we are trying to  
4 confine this only as to what you said and what  
5 D'Onofrio said.

6 A I asked Mr. D'Onofrio to tell me who was going  
7 to be the initial purchasers of the shares of stock. Mr.  
8 D'Onofrio showed me, I believe it was a yellow legal size  
9 pad and on that he had a list --

10 MR. GOULD: I object to anything that was on the  
11 pad.

12 THE COURT: Yes.

13 A Mr. D'Onofrio read me a list of names that he  
14 had and thereby telling me who was going to be the original  
15 purchasers --

16 MR. GOULD: I move to strike that out, your  
17 Honor.

18 Q Just tell us what he said.

19 A He told me who the purchasers of the stock were.

20 Q Did he mention any names, that you recall?

21 A Just a few names, that is all. I remember the  
22 name Strauch and Bundy, of course, my own uncle, Wu, things  
23 like that.

24 Q Mr. Feeney, during the course of this conversation  
25 did the name Philip Stoller and the name Jerome Allen

1 jgrf 4 Feeney-direct

2 come up?

3 A Yes.

4 Q Tell us, please, what Mr. D'Onofrio said?

5 A I asked Mr. D'Onofrio how it was that he was going  
6 to take the stock and bring it up or move it. He had told  
7 me he was going to be able to move the stock to a higher  
8 price than the \$7 initial price.

9 He told me that he had a couple of friends of  
10 his, Jerry Allen and Phil Stoller, that were going to  
11 help him ove the stock. He told me that Jerry and Phil,  
12 as he referred to them, were very strong in the street and  
13 that they had plenty of participation and it would be  
14 their job to make sure that the stock moved up.

15 Q Did he say anything else? That is at that time.

16 A He told me there was a bank in Switzerland,  
17 I believe the Bank Hofmann, that was going to be the ultimate  
18 purchaser of the shares of stock when the stock reached  
19 a level or a point of price that was high enough and agreed  
20 upon as far as an ultimate purchase. The idea was to  
21 bring it to a certain level, a certain price level.

22 Q Did he mention the name of the bank?

23 A Yes, Bank Hofmann.

24 Q Mr. Feeney, did you know Mr. Stoller?

25 A I had met Mr. Stoller just briefly.

1 jgrf 5 Feeney-direct

2 Q When?

3 A About a year or two before at Hancock Securities.

4 Q Who introduced you to him?

5 MR. GOULD: I object to this.

6 THE COURT: Overruled.

7 A Mr. Mel Heller introduced me to him.

8 Q You are dropping your voice and I can't hear you.

9 A Mr. Mel Heller introduced me to him.

10 Q When was the next time you had a conversation  
11 with Mr. D'Onofrio?

12 MR. GOULD: I assume with respect to Training  
13 With The Pros.

14 MR. SORKIN: Correct.

15 A As I stated before, Mr. D'Onofrio and I spoke on  
16 a regular basis. I would have conversations with him almost  
17 daily and the subject of Training With The Pros was always  
18 part of that conversation.

19 Q During what period of time was this, Mr. Feeney?

20 A This is early 1969.

21 Q Mr. Feeney, during the course of these conversations  
22 did the word nominee comeup?

23 A Yes.

24 Q Tell us, please, what Mr. D'Onofrio said and what  
25 you said, if anything?

1 jgrf 6 Feeney-direct

2 A Mr. D'Onofrio told me that in many instances the  
3 shares of stock, the names on the shares of stock that  
4 would be given, would not be given, would not be the  
5 individuals who would own the stock. They would be nominee  
6 names. In other words, they would be held for somebody  
7 else in their name. Also, Mr. D'Onofrio had talked to me  
8 again about the nominee situation with regard to my uncle.

9 Q What did he say?

10 A Mr. D'Onofrio told me that he was concerned from  
11 the standpoint of ownership as to the original purchase  
12 of the shares, the 1,000 shares of stock that Bundy had.  
13 He asked me if I would at some point please have Bundy  
14 sign a letter or a note, I don't remember exactly what  
15 it was, some form that he had handwritten to show that  
16 D'Onofrio was in fact the owner of the shares of stock,  
17 the 1,000 shares of stock.

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BY MR. SORKIN:

Q When was that, Mr. Feeney?

A I'm sure that it was after the stock had started trading. Mr. D'Onofrio and I met with -- I believe it was my aunt who had brought the paper over to an office over on Veteran's Highway in Bohemia, Long Island, and he brought the paper with him at that time.

Q Mr. Feeney, let me show you now what has previously been marked as Government's Exhibit No. 6 and No. 2-C. First look at 2-C.

Do you recognize the name Warren Bundy there?

A Yes.

Q Is that your uncle's handwriting?

A Yes.

Q Where was that signed?

A It says Peoples National Bank of Long Island.

Q Was Mr. D'Onofrio present when there was a discussion with respect to the certificate?

A Yes.

Q When was that?

A This was again referring back to that conversation in his home, the original conversation in his home about the purchase of shares of stock. Mr. D'Onofrio at a subsequent point when he received the shares asked me

2 to deliver the shares to Bundy and have Bundy endorse  
3 the shares or have the shares endorsed legally in the  
4 bank so that they could be transferred and sold.

5 Q Let me show you, Mr. Feeney, what has been marked  
6 in evidence and ask you if you can identify the signature  
7 there?

8 A Yes.

9 Q Whose signature is that?

10 A That is also Warren Bundy.

11 Q Where was that signed?

12 A This was signed -- this was I believe signed in  
13 Bundy's home or at the airport, I can't be sure.

14 Q Was Mr. D'Onofrio --

15 MR. GOULD: Do we need all this? There is  
16 no issue on this, your Honor.

17 THE COURT: I must say I don't understand there  
18 is either, Mr. Sorkin.

19 MR. GOULD: The piece of paper is in evidence.  
20 Who cares where it was signed, when it was signed. We are  
21 not interested in this.

22 THE COURT: I wouldn't think so. Let's go on  
23 to something else.

24 MR. SORKIN: Very well, your Honor.

25 Q Is that your uncle's signature?



2 A Yes, sir.

3 Q Did there come a time, Mr. Feeney, when you met  
4 Mr. Stoller and Mr. Allen?

5 A Yes.

6 Q With respect to Training With The Pros?

7 A Yes.

8 Q When was that, sir?

9 A This was just prior to the public offering of  
10 the stock. I would say it was in January of 1969.

11 Q Where did you meet them?

12 A At an apartment house that was being used as an  
13 office by Mr. Stoller and Mr. Allen. I believe it was  
14 on 60th or 61st Street between Lexington and Park Avenue  
15 in New York.

16 Q Did you go over there with anybody?

17 A Yes, I went over there with Mr. D'Onofrio.

18 Q Was anyone else in the apartment when you got  
19 there?

20 A Yes. When I walked into the apartment I remember  
21 seeing Mr. Stoller, Mr. Allen had a sweatsuit on. He was  
22 riding an exercycle. That was the first time I met him.  
23 There was another fellow, an older man, named Joe there.  
24 I don't remember his last name.

25 Q Did you have a conversation with Mr. Stoller,

2 Mr. Allen, Mr. D'Onofrio?

3 A Yes.

4 Q Tell us please what was said and by whom?

5 A The conversation -- we sat down on the couch  
6 and sat around more or less facing each other and the  
7 conversation, the words of the conversation were interposed.  
8 Everybody was contributing and asking questions back and  
9 forth. It is very difficult for me to say this person said  
10 exactly these words.

11 Jerry Allen would interrupt Mr. Stoller frequently  
12 during the conversations. So I may have a conversation  
13 relating to Mr. Allen, Mr. Stoller. Each would confirm  
14 what the other was saying.

15 Q Tell us what was said.

16 A I asked Mr. Stoller and Mr. Allen how it was  
17 that they were going to be able to take the price and make  
18 it go up. Mr. Stoller or Mr. Allen, whoever started off  
19 the conversation, and told me that the idea was to have a box  
20 on the stock.

21 What it meant by a box, there were no shares outside  
22 of this original purchase of stock that could be sold away  
23 from the intergroup, and Mr. Stoller, Mr. Allen kept looking  
24 over at Mr. D'Onofrio and saying as long as you do your  
25 job, as long as you keep the box together, we can do ours.

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2 . Either one, Mr. Stoller or Mr. Allen, said that  
3 the idea was to have one, two or three brokerage houses that  
4 were closely associated and friendly and what they would  
5 do is that one brokerage house would initiate a sale in  
6 the morning to a friendly brokerage house, another brokerage  
7 house -- we will call them A, B and C -- A would put a  
8 block of stock up for sale. B would buy it at a certain  
9 price. Sometime during the day, an hour or two later,  
10 B would either sell back to A or C thereby lifting the  
11 price or increasing the sales price in the stock each time  
12 and call it a one by one market, which means that they  
13 are selling maybe 100 shares or 200 shares of stock at a  
14 time, but giving the impression that the price -- there is  
15 a lot of volume in the stock when really there is only  
16 200 or 300 shares traded throughout the day.

17 MR. GOULD: Do we understand, your Honor,  
18 he is recounting the conversation? I'm not sure.

19 THE COURT: What about it, Mr. Feeney? Is this  
20 what was said?

21 THE WITNESS: Yes, it was, sir.

22 THE COURT: Who was it who said this?

23 THE WITNESS: Mr. Stoller and Mr. Allen were ex-  
24 plaining to me during this conversation how the price of  
25 stock went up.

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Feeney-direct

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THE COURT: All right, sir.

Q Was there any further conversation, Mr. Feeney?

A There was some conversation about the Bank Hofmann.

Q Tell us please what was said.

A I asked Mr. Stoller and Mr. Allen just what was the Bank Hofmann and where did they come into the picture. They told me that the Bank Hofmann's job through a fellow named Freddie Herbert was to take the shares of stock, this group of stock, when it was -- when it finally reached a level or price that was agreed on, and this bank was going to purchase these shares of stock and that the bank had sheiks and Arabs and Jewish people that had died during the second World War who had what they call dedcous and these people were going to be the ultimate purchasers of these shares of stock.

Q Was there any further conversation?

A Just general conversation about the market and about what about other stocks and so forth.

Q Have you ever heard of the term cross?

A Yes, I believe that term was used.

Q Tell us please what was said and by whom?

A In reference to the Bank Hofmann, as I stated before, the term cross was used to denote the sale of this particular block of stock.

The original shares of stock would be crossed or sold away from the market, this one by one market, to the bank, thereby taking all the shares away from the market and selling it to the bank and that would be called the cross.

Q Mr. Feeney, let me direct your attention now to approximately December of 1971. Did you go to Switzerland?

A Yes.

Q Did you go over with anyone?

A Yes, Mr. Philip Stoller.

Q By plane?

A Yes.

Q Did you have a conversation with Mr. Stoller on the plane on going to Switzerland?

A Yes.

Q Tell us, please, what was said by you and by Mr. Stoller.

A I asked Mr. Stoller if he could help me with introductions to banks in Switzerland. His first comment to me was that, "Are you sure you are not tape recorded or are you covered? Do you have a tape in your case there?"

I had a briefcase on my lap. I told him, I said, "If we are going to start off the conversation that way, there is no way of us having to talk at all."

2 I opened my briefcase up and -- we were sitting  
3 in the economy class. There was a seat in between. I  
4 opened my briefcase up and I more or less through my papers  
5 up and said, "Here, there is nothing in here."

6 He said, "No, I want to be friendly."

7 He says, "Just after that" -- you have to forgive  
8 me if I use curse words. He said, "Just after that guinea  
9 rat bastard" -- he was referring to Mr. D'Onofrio --

10 MR. GOULD: I want to hear you.

11 Q Keep your voice up, Mr. Feeney. Mr. Gould wants  
12 to hear you.

13 A "After all the tricks he has pulled, I just want  
14 to make sure that I'm not going to be a victim."

15 So I said, "No." I showed him the briefcase  
16 and I closed the briefcase. I threw it on the floor on  
17 the seat in front of me.

18 I said, "Is everything all right?"

19 He said, "Yes. If we can't have open conversation  
20 now, there is no sense in anything."

21 THE COURT: Excuse me. I didn't catch that.  
22 What date was this that you say this flight took place?

23 THE WITNESS: Around December of 1971.

24 THE COURT: December of '71?

25 THE WITNESS: Yes.

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Feeney-direct

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2 THE COURT: Thank you.

3 Q Tell us, please, the rest of the conversation,  
4 Mr. Feeney.

5 THE WITNESS: I'm sorry. December of '72 this is,  
6 your Honor.

7 MR. SORKIN: I didn't hear that, your Honor.

8 MR. GOULD: '72 or '71.

9 THE WITNESS: '72.

10 O Go ahead.

11 MR. GOULD: Does the Government accept that  
12 correction?

13 When he said '71 twice before, it is important  
14 to me.

15 MR. SORKIN: I'm asking the best of his recollec-  
16 tion.

17 MR. GOULD: The witness said '71, your Honor.  
18 He said it twice. Now he has changed it to '72. I want  
19 to know from the Government whether they accept the  
20 amendment to '72. It is extremely important, the month  
21 and year?

22 MR. SORKIN: May I answer Mr. Gould?

23 THE COURT: Surely.

24 MR. SORKIN: We do not accept '72. May I ask  
25 Mr. Feeney a question?

1 gwrfl 10 Feeney-direct 1250  
2 THE COURT: Go ahead.  
3 Q Mr. Feeney--  
4 MR. GOULD: Is this redirect?  
5 THE COURT: Just a moment. Go ahead.  
6 MR. SORKIN: Thank you.  
7 Q Mr. Feeney, do you remember when a stock called  
8 Codings Unlimited was suspended by the SEC?  
9 A Yes, sir.  
10 Q When was that, sir?  
11 A It was '71.  
12 Q When was this conversation with Mr. Stoller?  
13 A '71.  
14 MR. GOULD: That doesn't cure it, your Honor.  
15 THE COURT: It may not. We will let the jury  
16 decide that.  
17 MR. GOULD: Thank you.  
18 THE WITNESS: I'm in error. It was '71, your  
19 Honor.  
20 THE COURT: You just stated to me that you -- say  
21 it out loud.  
22 THE WITNESS: It was 1971.  
23 THE COURT: You are sure about it now that you  
24 thought it over?  
25 THE WITNESS: Yes, I think in later conversation



1 10a gwrff Feeney-direct 1251a  
2 you will see why I made the mistake.  
3 THE COURT: December of '71.  
4 Go ahead, Mr. Sorkin.  
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2 Q Tell us, please, the remainder of the conversation.

3 A I asked Mr.Stoller if he could to please introduce  
4 me to some banks in Switzerland. He said he didn't  
5 know if he would be able to do that or not, but he would try.  
6 I also asked him to please give me a little bit of advice  
7 on what and how I should go about trying tp place a stock  
8 inSwitzerland so that I would be successful in the stock I  
9 had been working on which is this Codings Unlimited stock.

10 I asked Mr.Stoller to give me an idea of exactly  
11 what took place. He told me about the stock Training With  
12 the Pros. This is a stock that we are both familiar with and  
13 used it as an example of what must be done and how it should  
14 be done in order to have a successful sale of stock or  
15 crossing of a block of stock.

16 Again, to be repetitive, he went through the  
17 process of how he took the --

18 Q Just tell us what he said.

19 A He told me that -- what he and Jerry did was  
20 they made arrangements for the stock, the Training With the  
21 Pros stock, to be sold, to be kicked back and forth between  
22 brokerage houses, the words he used, until it finally  
23 reached a level -- I don't know what the ultimate price  
24 was, but I remember it being in excess of \$50.

25 He told me that at a certain point -- I think it

1 gab-2

Feeney-direct

2 was around \$38, \$40, the stock was sold through the Bank  
3 Hofmann.

4 I said, "Who are all the sheiks and the Arabs and  
5 everybody like that?"

6 He said, "It wasn't sheiks and Arabs, it happened  
7 to be a couple of people, friends of ours that bought the  
8 stock as well as some Swiss Bank that bought the stock."

9 Q Did he name any names?

10 A Yes, he said the name Joe Bonavia and Muir  
11 Weissinger.

12 Q Go ahead.

13 A He told me what they did.

14 MR. GOULD: I move to strike it out, your Honor.

15 THE COURT: Yes, sustained.

16 Q Just tell us what he said.

17 A MR. Stoller told me that the shares of stock,  
18 we will call it the first block of stock -- I remember the  
19 price being around \$38 a share, because my thousand shares  
20 were sold at that price.

21 That first block of stock was sold through the  
22 Bank Hofmann and it was -- it wasn't so much of a sale  
23 as a gathering of stock, so it looked like a sale.

24 Then the stock was taken to a second level after  
25 the stock was gathered and the stock was gathered for his

gab-3 Feeney-direct

benefit, for Jerry Allen's benefit and for Ramon D'Onofrio's benefit.

They would put it together like a consortium, like a partnership arrangement. They would own as many shares of this original block of stock as they possibly could get a hold of.

Q Keep your voice up, Mr. Feeney.

A All right. They would put together as many of these shares of stock as they could on a partnership basis so that they could be sold ultimately to this group of people, this Muir Weissinger and Joe Bonavia, et al.

MR. GOULD: et al?

THE WITNESS: Yes.

MR. GOULD: Thank you.

Q Did the phrase "omnibus account" come up in the conversation?

A Yes.

Q What was said?

A I asked Mr. Stoller how he was gathering the stock and how they held it together. He told me that there was a partnership account, an omnibus account, that was set up for that purpose between he and D'Onofrio and Allen and that the shares of stock would be held in that account until they were ultimately sold.

1 gab-4

Feeney-direct

2 Q Did Mr. Stoller mention Mr. D'Onofrio at all  
3 further in the conversation?

4 A Yes. He talked about Mr. D'Onofrio. There was  
5 a number of things we talked about. We talked about his  
6 relationship with him, but he told me that he didn't care  
7 for D'Onofrio at all and that he hated him and that he  
8 wished somebody had done away with him and if somebody  
9 else didn't do it, he would like to do it himself.

10 Q Was there any further conversation, Mr. Feeney?

11 A I don't recall any further conversation, Mr.  
12 Sorkin.

13 Q When you arrived in Switzerland, did you have a  
14 conversation with Mr. Stoller?

15 A Yes. It was early in the morning. Mr. Stoller  
16 and I checked into the Eden au Lac Hotel, and we agreed to  
17 get cleaned up because we had been flying all night and we  
18 would meet for a quick breakfast downstairs before we would  
19 go on our own business. We did that.

20 Q Did you have a conversation?

21 A Yes. Mr. Stoller told me that he was going to go  
22 over to the Bank Hofmann and finish up his business there,  
23 and that he would see me that evening and not to make any  
24 plans for dinner, he wanted to see me that evening.  
25

2 Q Did you meet Mr.Stoller for that dinner that  
3 evening?

4 A Yes.

5 Q Was anyone else present?

6 A No.

7 Q Where did you have dinner, do you recall?

8 A At the Eden au Lac Hotel.

9 Q Tell us, please, what was said.

10 A Mr.Stoller told me that he was very happy that he  
11 concluded all of his business with the Bank Hofmann, that  
12 he had taken his accounts and moved them on to another bank,  
13 to the -- I believe he said to the Swiss Bank Corporation,  
14 and that he had a new account executive over there.

15 He told me he thought very highly of this man,  
16 Dr.Walter Valalous.

17 Q Any further conversation?

18 A He gave me Dr. Valalous' business card. He told  
19 me that as far as he was concerned at that point, that the  
20 tax department and D'Onofrio and the whole world could  
21 go drop dead, that he was very sure that he was fully  
22 protected right now and that everything he had was in safe  
23 hands and that he was going to just live --

24 MR. GOULD: I move to strike the whole conversa-  
25 tion out, your Honor. I thought they were going to talk

gab-6

Feeney-direct

1 about our case. I don't think it has any relevance.

2 THE COURT: I am going to overrule that.

3 A He was going to live and relax and not worry about  
4 anybody any more, that --

5 Q Was there any discussion of Training With the  
6 Pros, Mr. Feeney?

7 A The only discussion was a reference I had made  
8 to Training With the Pros when I asked him again, could  
9 he please introduce me to some of the people in Switzerland  
10 that had helped him with Training With the Pros.

11 Q Did he say anything?

12 A Yes. He told me that he would, and he said the  
13 Bank Hofmann was the main thrust of the sale and that I had  
14 already discussed with him one bank, the Merkey Ballman Bank,  
15 whose name I had known before.

16 Q Was Mr. Herbert's name brought up in conversation?

17 MR. GOULD: I object to this. He already asked  
18 him for the conversation several times, your Honor.

19 THE COURT: I would certainly think you may be  
20 right. What are you talking about, the evening, the dinner?

21 MR. SORKIN: The dinner.

22 THE COURT: Do you remember anything else that you  
23 two discussed at dinner that night, Mr. Feeney?

24 THE WITNESS: Yes, sir. We talked about Mr.  
25

1 gab-7

Feeney-direct

2 Herbert, Mr. Fred Herbert and Mr. Ballmer, I believe was  
3 his name. Both of them were bank executives with Bank  
4 Hofmann.

5 Q What was said, please?

6 A Mr. Stoller told me that he had no more concern  
7 about the bank and now that Freddy was partners with Ray,  
8 he didn't have to worry about Freddy any more because the  
9 things he had done at the bank assured him that there would  
10 be no way of the bank turning over any documents to Raymon  
11 D'Onofrio any more or to Freddy Herbert.

12 Q Let me direct your attention to 1972, early spring.

13 Did you have any conversation with Mr. Stoller  
14 and Mr. Allen?

15 A Yes.

16 Q Where was this?

17 MR. GOULD: Could we have a date now?

18 Q Could you fix that date, Mr. Feeney?

19 A I can't fix it. I would say it was the late  
20 winter or rearly spring. I can't give you an exact date of  
21 1972.

22 THE COURT: Excuse me. You mean by that that  
23 this is January, February of 1972 or perhaps March?

24 THE WITNESS: I would say closer to March.

25 THE COURT: March of '72?



2 THE WITNESS: Somewhere in that range.

3 THE COURT: All right.

4 A I was at Mr. Allen's apartment.

5 Q Was anyone else present?

6 A Yes, Mr. Stoller, Mr. Allen, Mr. Joe Bonavia and  
7 intermittently Mr. Allen's son Greg.

8 Q Tell us, please, what was said.

9 A Mr. Bonavia had asked me if --

10 Q Stop. Was this in their presence?

11 A Yes.

12 Q Go ahead then.

13 A Everything I am saying now is in the presence of  
14 Mr. Allen, Mr. Stoller, Mr. Bonavia, myself and as I  
15 said intermittently Mr. Allen's son was walking back and forth  
16 into the room.

17 Mr. Bonavia told me he was going to institute  
18 a lawsuit in Switzerland against the Bank Hofmann. He was  
19 complaining that he did not want to purchase or never  
20 really wanted to purchase the shares of Training With the  
21 Pros, and that he felt he had a lawsuit against the bank for  
22 them purchasing the shares of stock in his account.

23 At that time I had been engaged in a lawsuit  
24 against the bank myself. Mr. Bonavia was asking me about the  
25 attorneys I had used, what methods I was using and generally

gab-9

Feeney-direct

asking me how I was handling the lawsuit in Switzerland with the laws of Switzerland.

Q Did Mr. Stoller say anything in this conversation?

MR. GOULD: I think he ought to finish what he remembers.

Q I am sorry. Tell us, please, the entire conversation and identify who was speaking, Mr. Feeney.

A All right. I told Mr. Bonavia that I would give him whatever help I could and I gave him the name of an attorney, a Dr. Ralph Blatter, who was an attorney in Zurich, Switzerland, that I was using. Mr. Bonavia asked me what I knew about Training With the Pros.

I told him of my purchase of the stock, what Ray D'Onofrio had told me about it, and of some of the conversations that Mr. Stoller and I had.

Mr. Stoller told me, told Mr. Bonavia and Mr. Allen just to give description.

The conversation again was a four-way conversation. I don't think that he was singling me out for his answers, that he would give Mr. Bonavia whatever help he could.

Q Who is talking now?

A Mr. Stoller.

Q Go ahead.

1 gab-10

Feeney-direct

2 A Is saying to Mr. Bonavia and to me and to Mr.  
3 Allen that he would give whatever help he could to Mr.  
4 Bonavia in his recovery of his losses in Training With the  
5 Pros, and that he would help him with his relationship with  
6 Bank Hofmann, to try to undo the problem that he had.

7 Q Was there any further conversation?

8 A Mr. Allen more or less parroted the same words.  
9 He said he would do the same thing. He would give Mr.  
10 Bonavia whatever help he could in undoing the purchase of  
11 Training With the Pros stock.

End 2B 12

13  
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2

Q Do you recall anything else said?

3

A No.

4

5

Q Let me direct your attention, Mr. Feeney, to the fall of 1973. Did you go to Switzerland?

6

A Yes.

7

8

Q While in Switzerland did you meet anyone? Could you pin that down as to when you went, Mr. Feeney?

9

A The date?

10

Q Yes, sir.

11

12

13

14

15

A It is difficult. I make so many trips to Europe it is hard to say just exactly what dates it was, but I would say it would be October, maybe November. I just can't be sure without checking my record. I just don't know. It would be the fall of 19 --

16

17

MR. GOULD: Checking your record, is that what you said?

18

THE WITNESS: Checking a record.

19

MR. GOULD: Thank you.

20

Q Did you meet Mr. Stoller in Switzerland?

21

A Yes.

22

Q Where?

23

A At the Nova Park Hotel in Zurich, Switzerland.

24

Q Where did you meet him?

25

A In his hotel room.

1 qb-2

Feeney-direct

2 Q Was anyone else present?

3 A Yes, Mr. Fred Herbert, Mr. Jerry Allen, Mr. Stoller  
4 and myself.

5 Q Tell us, please, Mr. Feeney, the conversation  
6 and who said what and to whom.

7 A Jerry Allen started the conversation off. He  
8 told everybody -- again it was a four-way conversation.  
9 It wasn't directed totally at me. He told me and everybody  
10 else that he had no intentions of going back to the United  
11 States, that he was going to stay in Switzerland, and that  
12 he wasn't going to answer the subpoenas for indictment  
13 that he had against him.

14 In other words, he told me he was going to be  
15 a fugitive. He told me that Phil had agreed to help him out  
16 with some money, to lend him some money, and that Freddy  
17 Herbert was going to help him with some connections he had  
18 in Switzerland to start some kind of periodical or financial  
19 paper that he was going to use in Switzerland.

20 Q Keep your voice up.

21 A Mr. Fred Herbert was going to help Jerry Allen  
22 start a periodical or financial newspaper in Switzerland.  
23 Mr. Allen told me that he had made arrangements or was about  
24 to make arrangements through a friend of Fred Herbert's to  
25 have his passport updated for \$1000. He had a friend of

2 his in Berne, Switzerland, that would take the passport.  
3 It would be a legal passport, and it would be updated to  
4 a new date, an accelerated date so that he would have the  
5 ability of having his passport current since his was just  
6 running out.

7 MR. GOULD: At this point I am going to object  
8 to the relevancy and materiality of this all. I am all  
9 confused. What does this have to do with the case?

10 THE COURT: I must say that this last I don't  
11 think we need to get into.

12 MR. SORKIN: In the context of the entire con-  
13 versation, if Mr. Feeney will be allowed to continue, it  
14 will have relevance not only to the second indictment --

15 MR. GOULD: Can I get an offer of proof?

16 THE COURT: I will change my mind. I see what  
17 you mean.

18 Go ahead.

19 A Mr. Herbert told me that if I needed this type  
20 of passport I could get it also. Mr. Stoller then said that  
21 he didn't wish to stay in Switzerland. He didn't like the  
22 weather. He personally didn't care too much for the  
23 people and that he preferred, if he could, to stay in a  
24 different area.

25 He told me that he had a friend of his in the

1 Bahamas that would give him a temporary residency with the  
2 prospect of having permanent residency in the future, and  
3 that there was a certain amount of money that had to be  
4 given to this individual. I don't recall how much it  
5 was.  
6

7 Anyway, that this offer was being made to me if  
8 I wanted it because at that time I had been under indictment  
9 and he asked me if I would be interested in doing the same  
10 thing.

11 MR. GOULD: I move to strike it out, your Honor.  
12 We are not charged with anything like that concerning this  
13 man.

14 THE COURT: We are not charged with anything that  
15 he is indicted for.

16 MR. GOULD: That is correct.

17 THE COURT: That is of no consequence. I am not  
18 going to strike it. He says he was under indictment at  
19 the time.

20 Go ahead.

21 Did you tell these people this? That is, in the  
22 conversation, that you were under indictment?

23 THE WITNESS: We discussed my indictment.

24 THE COURT: Where did you tell them you were  
25 indicted?

qb-5

Feeney-direct

THE WITNESS: It was in the Southern District of New York.

THE COURT: Here?

THE WITNESS: Yes, the same case as Mr. Allen, so they were familiar with it. It was a general conversation.

THE COURT: Next question, Mr. Sorkin.

MR. SORKIN: I don't think he is through with the conversation.

THE COURT: There has been an interruption and so we don't make any more difficulties why don't you put the question again with whatever it is you want.

Q Tell us, please, the rest of the conversation, if any.

A Mr. Stoller told me, as I said before, about the Bahamas, that I too could get residency there. That is, if I wanted it. He told me that he had thought possibly this is where he would go because first of all it was so close to Miami and that a lot of his friends would stay in the Bahamas or it was close enough that if he wanted to see his friends, they could just hop over on the shuttle flights they have from Miami.

MR. GOULD: I renew my motion to strike it out. I direct your Honor's attention to the language of Count 1



qb-6

Feeney-direct

of the so-called obstruction counts, the one in 74 Cr. 763. This man is testifying with respect to a different offense.

THE COURT: I quite agree. I am not bound by that. That is not the reason I am allowing this.

MR. GOULD: Am I not entitled to understand what theory --

THE COURT: I will be glad to enlighten you at the next break. Let's finish this up, Mr. Sorkin, please.

MR. SORKIN: Yes, your Honor.

Q Tell us, please, Mr. Feeney, if there was any further conversation.

A Mr. Allen said that he thought it would be a good idea since we would be discussing the Bahamas as a possible haven, that we give it some kind of code name so that we would know what we are talking about when we spoke on the telephone. He used the name, either Sunshine or Swimming Pool, I don't remember.

MR. GOULD: Either?

THE WITNESS: Either Sunshine or Swimming Pool, with reference to the Bahamas.

MR. GOULD: Now I do have to be enlightened. Does he mean he used either Sunshine or Swimming Pool or that the witness doesn't remember whether it was Sunshine or

2 Swimming Pool? It is susceptible of both interpretations.  
3 I would like to get his recollection.

4 THE COURT: We will.

5 Is that all you remember or is there anything  
6 else to this conversation?

7 THE WITNESS: That is about it.

8 THE COURT: Will you explain what counsel is concerned  
9 about? Are you saying you can't remember which name it  
10 was, either Sunshine or Swimming Pool?

11 THE WITNESS: Both names were used. Originally  
12 one was going to be used and somebody said, "Let's not use  
13 that," because it was synonymous with something else, and  
14 I don't recall which one was synonymous. They had used  
15 the name Sunshine or Swimming Pool as a code name in some  
16 other venture or arrangement, so I don't remember which one  
17 was used ultimately.

18 THE COURT: But you do recall both names were  
19 discussed at this conversation?

20 THE WITNESS: Yes.

21 THE COURT: Anything else, Mr. Sorkin?

22 MR. SORKIN: Yes, your Honor, if I may proceed.

23 THE COURT: Incidentally, I should tell you and  
24 the jury that I am receiving all of this conversation business  
25 over in Switzerland in the fall of 1973 and, indeed, in

1 gb-8

Feeney-direct

2 1973, subject to connection as to the defendant Stoller  
3 only, not as to Frank, even subject to connection.

4 MR. SORKIN: May I be heard on that at the next  
5 break?

6 THE COURT: You may not. I am telling you that.  
7 If you want to wrangle with me at a later date or argue  
8 the point, I will let you when I hear from Mr. Gould, but  
9 let's get this done.

10 Q Was Mr. D'Onofrio's name brought up in conversa-  
11 tion?

12 A Yes. Mr. Stoller said that "Now we have got  
13 Jerry over here, he is not going to talk. He is not going  
14 to say anything to anybody," referring to the Government.  
15 "Freddy Herbert is not going to talk to anybody because he  
16 had a conflict with the bank. He couldn't possibly testify  
17 in the United States.

18 And he himself, pointing to himself, was not going  
19 to say anything because there was no reason to. The only  
20 one left in the conversation was me, was I going to  
21 say anything. I told them at that time that I had nothing  
22 to say.

23 Q When was the next time you had a conversation  
24 with Mr. Stoller?

25 A Of course, just going out to the airport. But

1 gab-9 Feeney-direct 1270

2 I spoke with Mr. Stoller again at a different time when  
3 I got back to the United States.

4 Q Tell us, please, what was said on the way to the  
5 airport.

6 A On the way to the airport --

7 Q And when did you go to the airport, for Mr.  
8 Feldshuh?

9 A I am not Mr. Feldshuh --

10 THE COURT: Forget who asked you, you are the  
11 questioner. Let's not get Mr. Feldshuh's name in here.

12 Q When did you go to the airport, Mr. Feeney?

13 A The early afternoon we took -- Fred Herbert had  
14 his car and he drove Mr. Stoller, Mr. Allen and myself to the  
15 Zurich airport and Mr. Stoller was catching the afternoon  
16 flight to New York. In the car we discussed the Bahamas. We  
17 discussed the fact of everybody keeping quiet and not talking  
18 about the Bahamas as a possible place to take refuge if we  
19 had to with these indictments.

20

21

22

23

24

25

1 jgrf 3b am 1 Feeney-direct

2 Q Was anything else said?

3 A Mr. Allen asked Mr. Stoller about the money that  
4 he was going to lend him and Mr. Stoller said to Mr.  
5 Allen that, "I have to go back to the United States."  
6 He had some papers that had to be signed in the United States  
7 before the loan could be made, he said.

8 Mr. Stoller left on the airplane and Mr. Herbert  
9 drove Mr. Allen and myself back into Zurich and on the  
10 way back to Zurich Mr. Allen told me that he didn't see --  
11 he said he didn't see why Phil couldn't give him the money  
12 then.

13 He needed it so badly and why did he have to go  
14 back to the United States.

15 Q Mr. Feeney, when you got back to the United  
16 States did you have a conversation with Mr. Stoller?

17 A Yes.

18 Q When was this?

19 A I would say within a couple of weeks of that  
20 trip.

21 Q Approximately when?

22 A I would say November.

23 Q 1973?

24 A Yes, still 1973.

25 Q Where was the conversation?

1 jqrfr 2

Feeney-direct

2 A Mr. Stoller called me on the telephone and told  
3 me that he had talked with Jerry Allen and he was concerned  
4 about Jerry because Jerry --

5 MR. GOULD: Objection.

6 THE COURT: All right.

7 A He told me he was concerned about Jerry. Jerry  
8 was running out of money and that if he ever collapsed  
9 Jerry could be a big problem. If he ever came back to the  
10 United States in the state of mind that he was in he would  
11 be a very difficult guy to deal with.

12 Q Was Mr. D'Onofrio's name mentioned in this  
13 conversation?

14 A Yes. Mr. Stoller told me that as far as he was  
15 concerned D'Onofrio had just made the biggest mistake of his  
16 life. He had written a letter to somebody, an attorney,  
17 a friend of Mr. Stoller's, and in that letter he more or  
18 less blackmailed Mr. Stoller. Mr. Stoller read the letter  
19 to me and he made some reference to me in the letter too.  
20 I don't remember exactly what the words were. But they  
21 were derogatory words.

22 He read the letter to me on the telephone. It  
23 was either on that date or a subsequent date. Anyway, he  
24 read the letter to me on the telephone and then on a  
25 subsequent date I went to his office over at Crole, Dalin

1 jgrf 3 Feeney-direct

2 and Mr. Stoller showed me the letter and let me read it.

3 Q Let me show you what has been marked as Stoller  
4 Exhibit G, Mr. Feeney.

5 Would you look at that please, and I ask you  
6 if that is the letter that he showed you. Please don't  
7 read it out loud but you may read it to yourself.

8 Is that the letter Mr. Stoller showed you?

9 A Yes.

10 MR. GOULD: Can we understand from what the  
11 witness has been shown whether it is in evidence?

12 MR. SORKIN: I identified it as Stoller Exhibit  
13 G.

14 MR. GOULD: All right. I know what it is now.  
15 I had it in my hand.

16 MR. SORKIN: I thought I identified it.

17 Q Mr. Feeney, have you been convicted of conspiracy?

18 MR. GOULD: Objection.

19 THE COURT: Overruled.

20 However, I do think the form isn't very good.

21 We don't have to put words in Mr. Feeney's mouth.  
22 Just ask him the question.

23 Q Have you been convicted of a crime?

24 A Yes.

25 Q Where?

1 jgrf 4 Feeney-direct  
2 A Southern District of New York here.  
3 Q When?  
4 A Last year.  
5 Q I can't hear you.  
6 A Last year I pleaded guilty.  
7 Q Was that in connection with a particular stock?  
8 A Yes, Coatings Unlimited.  
9 MR. GOULD: Objection.  
10 THE COURT: What was the nature of the crime to  
11 which you pleaded guilty?  
12 THE WITNESS: Stock fraud.  
13 Q Where are you now?  
14 A Bergen County Jail.  
15 Q In prison?  
16 A Yes.  
17 THE COURT: Wait a minute. I am sorry, Mr.  
18 Feeney, three feet away I couldn't hear that. What did  
19 you say?  
20 THE WITNESS: Bergen County Jail Annex.  
21 THE COURT: Are you serving some term that was  
22 imposed in this court?  
23 THE WITNESS: Yes, I am serving under a federal  
24 term but I am writted out to the jail in Bergen County.  
25 I am serving a one-year sentence.



1 jarf 5

Feeney-direct

1275

2 THE COURT: You were writted from where to Bergen  
3 County?

4 THE WITNESS: Allenwood, Pennsylvania.

5 MR. SORKIN: No further questions.

6 THE COURT: All right, ladies and gentlemen of  
7 the jury, you will take the morning recess at this point,  
8 ten minutes. Counsel please remain.

9 (Jury left courtroom.)

10 THE COURT: Mr. Gould and Mr. Sorkin, I believe this  
11 testimony, if it were to be believed, is highly relevant  
12 on a number of counts which can perhaps be summarized. I  
13 believe this is highly relevant insofar as the Defendant  
14 Stoller is concerned very simply on the basis to go along  
15 two theoretical lines.

16 First, it would be arguably, if the jury wished  
17 to believe this and, second, if they believed it, if they  
18 wish to draw this inference, evidence of consciousness of  
19 guilt on the part of Mr. Stoller.

20 Second of all, I think I now finally glean what  
21 Mr. Sorkin was probably trying to tell me, namely that this  
22 evidence is relevant to show his state of mind with  
23 respect to those obstruction of justice counts on which  
24 Mr. Stoller is named. Therefore, I admitted the evidence  
25 and I admitted it only as to the Defendant Stoller. I don't

jqrf 6

Feeney-direct

think it has any application to Frank at all.

What is your problem, Mr. Sorkin?

MR. SORKIN: Nothing, your Honor. You articulated it better than I could.

MR. GOULD: That I am sure of.

THE COURT: You said something you wanted to take umbrage because I ruled and told the jury I wasn't receiving all of this testimony as to Mr. Frank.

MR. SORKIN: No, I didn't. I was taking umbrage when I thought you said you were taking it only as to the first count.

THE COURT: I see. I think it is a two-pronged question and I have expressed it and I need say no more and I assume M. S. Gould, Esq. in his best form would disagree with me and I don't blame him but that is the way I feel.

MR. GOULD: I have nothing more to say. You have ruled.

THE COURT: Are you sure you are finished with direct, Mr. Sorkin?

MR. SORKIN: Yes, your Honor, I am quite sure.

THE COURT: Let's take a few minutes and we will resume in three or four minutes.

(Recess.)

(In open court, jury present.)

jqrf 7

Feeney-cross

CROSS EXAMINATION

BY MR. GOULD:

Q Mr. Feeney, where did you say you live now?

A I am in the Bergen County Jail Annex.

Q You have just been brought over there from a federal penitentiary, have you not?

A A federal prison camp, yes, that is right.

Q Allenwood, part of the Lewisburg complex?

A It's not part of Lewisburg, no.

Q Allenwood is what?

A It is a federal prison camp.

Q You are serving a sentence there now?

A Yes, one year.

Q When were you brought here, brought to Bergen County Jail, that is?

A About five weeks ago.

Q Five weeks ago?

A Four or five weeks ago, yes.

Q Since you were brought here four or five weeks ago how many times have you been in this building?

A About ten times.

Q What have you been doing in this building?

A Talking with U. S. Attorneys.

Q Which U.S. Attorneys?

1 jqrfr 8

Feeney-cross

2 A Mr. Sorkin, Mr. Feffer.

3 Q How about Mr. Doonan, you have seen him around,  
4 haven't you?

5 A He is not a U. S. Attorney.

6 Q How many times have you talked with Mr. Sorkin  
7 and Mr. Doonan in your last five weeks since you have been  
8 brought back?

9 A I would say I saw them at least seven times.

10 Q What have you been talking about?

11 A We discussed Training With The Pros.

12 Q This case here, your testimony, is that right?

13 A That is correct.

14 Q What you have been doing is going over your  
15 testimony in this case, is that not a fair statement of what  
16 you have been doing?

17 A Yes.

18 Q You would tell the story, they would listen to  
19 it, correct?

20 A Yes, sir.

21 Q Then they would make suggestions to you?

22 A No, they didn't make suggestions.

23 Q How many times did you go over the story in the  
24 last five weeks?

25 A I would say half a dozen times.

1 jgrf 9

Feeney-cross

2 Q Was it any different the first time from what it  
3 is today?

4 A No.

5 Q Why did you have to go over it half a dozen times?

6 A Just go over it, that is all.

7 Q When you told it to them the first time were  
8 they satisfied? They said, "That is it"?

9 A I believe so.

10 Q Then a week or so later they brought you back  
11 and you went over it again?

12 A Yes.

13 Q And they said okay?

14 A Yes.

15 Q And the third time you told it again?

16 A Correct.

17 Q No changes, no amendments?

18 A No.

19 Q No additions?

20 MR. SORKIN: I can't hear Mr. Feeney, I am sorry.

21 MR. GOULD: I am hearing him pretty good.

22 MR. SORKIN: You are not letting him answer.

23 MR. GOULD: I will be slower with Mr. Feeney.

24 Q Do I have it in your testimony that in the last  
25 five weeks you have been over this testimony of yours six

jarf 10

Feeney-cross

times and there has not been one single change or amendment from what you told here today?

A I would say this, Mr. Gould, to answer you:

Over the period of time of these conversations I would try my best to recall the incidents and the questions that were asked of me this morning.

Q Are you finished?

A No, I would like to summarize for you.

Q Go on, tell us everything you can.

A I would say basically that the conversations would be the same. The substance of the conversations was the same each and every time. If I remember a word or didn't remember a word from one visit to another it didn't substantially change or alter the substance of my conversation.

2 BY MR. GOULD:

3 Q Well, now, did you meet Mr. D'Onofrio while you  
4 were there?

5 A No.

6 Q Never saw him?

7 A No.

8 Q Now, sir, what was the nature of the offense of  
9 which you were convicted?

10 A Stock fraud.

11 Q You have also been named in certain other indict-  
12 ments, have you not?

13 A Yes, sir.

14 Q You are named as a defendant, are you not, in an  
15 indictment filed in the United States District Court for  
16 the Southern District of New York in a case entitled United  
17 States of America against John Feeney, John J. Santini, also  
18 known as Sonny Santini.19 MR. SORKIN: That is the Coatings Unlimited  
20 indictment.

21 Q That is the one you pleaded guilty to?

22 A That is correct.

23 Q That is the one in which Santini and Bernardelli  
24 and the rest of these fellows are all named as defendants?

25 A That is right.

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Feeney-cross

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Q It involves a charge that you manipulated certain securities, is that right?

A Yes, sir.

Q And that you made false statements, too, or just manipulation in that one?

A I don't have the indictment in front of me. I'm sorry.

Q You read it?

A I did, but --

Q You read it sometime after August 1973, did you?

A I'm sure I did.

Q And you pleaded guilty to it?

A That is correct.

Q And you don't know what it charges?

A I was charged with stock fraud.

Q What else?

A I can't remember.

Q Do you remember how many counts there were in it?

A I pleaded to one count.

Q You pleaded to one count out of how many?

A I thought it was 14.

Q And then you were indicted in something else here, something called United States against Ramon N. D'Onofrio, Joseph P. Pfingst and James Feeney, right?



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Feeney-cross

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A That is correct.

Q That is over in the Eastern District?

A That is correct.

Q You are the Feeney that is in that one?

A That is correct.

Q That indictment came down when?

A 1971.

Q '71?

A Yes, sir.

Q Who were you charged with in that indictment?

A Bankruptcy fraud.

Q You mean stealing from a bankrupt estate?

A I don't know what the interpretation is. It just said bankruptcy fraud.

Q Did you plead --

MR. SORKIN: I object, your Honor. That indictment, Mr. Gould well knows, was dismissed a long time ago.

MR. GOULD: I want to find out about it.

MR. SORKIN: That is not the way he is phrasing his questions, your Honor.

Q Did you plead to this indictment?

A I did not. I pleaded innocent.

Q You pleaded innocent?

A And the charges were dropped against me.

2 Q When were they dropped against you?

3 A They were dropped against me in 1972.

4 Q Were you a witness in that case against Mr. Pfingst?

5 A No, I was not.

6 Q Do you know why they were dropped?

7 A Yes, because there is no foundation for them.

8 It was a movement by the Government. They moved themselves  
9 to drop the charges against me. I was separated from the  
10 trial by a motion of the judge and the Government chose  
11 not to take me to trial and the Government dropped the  
12 charges against me.

13 Q In other words, you persuaded them that the  
14 Government's charge was an unfair charge?

15 A I never took the stand, I never made a pleading.  
16 The Government itself made the motion.

17 Q I see.

18 But you were, were you not, a partner or an em-  
19 ployee of this dairy business, Evans Dairy?

20 A That's right.

21 Q With Mr. Pfingst, right?

22 A Mr. Pfingst was the attorney.

23 Q I want to know, did you conspire with Mr. Pfingst  
24 and Mr. D'Onofrio to steal money from that company?

25 A No, I did not.

Q That was a false charge against you?

A Yes, it was.

Q Now, you were indicted in 1973 in another case, weren't you?

A That is right.

Q Which one was that? Do you remember?

A United States against Jerome Allen.

Q Jerome Allen, Salvatore Thomas, Bud Badalamente, Berardelli and yourself and some other fellows. What was that all about?

A Are you asking me about the case?

Q Yes. What were you charged with?

A It was a passbook, bank passbook.

Q Were you charged with conspiring to transport forged, altered and counterfeited securities in interstate commerce?

MR. SORKIN: Your Honor, I object. Mr. Gould can ask him, did he plead or was he convicted of this without reading the indictment.

MR. GOULD: I'm not reading the indictment. I'll be glad to if you want.

THE COURT: I thought you said you were going to do something different.

MR. GOULD: I didn't read the indictment. I just

2 asked him, isn't that what the substance of the charge was.

3 THE COURT: Do you remember the substance of these  
4 charges, Mr. Feeney?

5 THE WITNESS: Not really, your Honor. I believe  
6 it was to do with the transfer of the passbook. I think  
7 that is what the charge was.

8 MR. GOULD: Then I have a right to suggest to  
9 him --

10 THE COURT: What happened in that case? Has it  
11 gone to trial, have you pleaded guilty or what has  
12 happened?

13 THE WITNESS: The United States Government on  
14 its own efforts moved and gave me a nolle presequi --

15 THE COURT: They dropped the case.

16 THE WITNESS: They dropped the case. I never went  
17 to trial. I was never called as a witness. I was never  
18 charged any further in that case. The Government's motion  
19 moved and dropped the charges against me.

20 Q Did you actually commit this offense?

21 A No, I did not.

22 Q So you were falsely charged by the Government  
23 in this?

24 A Yes, and it so states in the nolle prosequi.

25 Q That is twice now they have done that to you.

2 MR. SORKIN: Objection, your Honor. That is uncalled  
3 for on Mr. Gould's part and it is improper. With his  
4 experience, he should know better.

5 MR. GOULD: That's right. I shouldn't have  
6 said that.

7 THE COURT: We will disregard everything Mr.  
8 Gould said in that connection. Let's go on.

9 Q Let me ask you something, Mr. Witness.

10 There came a time when you entered into an  
11 agreement with the Government?

12 A That is correct.

13 Q An agreement in writing?

14 MR. GOULD: There is no mark on this, Mr.  
15 Sorkin?

16 MR. SORKIN: That was Brady. That was your  
17 copy.

18 MR. GOULD: We will mark it as a Defendant  
19 Stoller's Exhibit.

20 (Defendant Stoller's Exhibit O marked for  
21 identification.)

22 Q Are we right now, you have been indicted three  
23 times, correct?

24 A Correct.

25 Q Two of them were dropped by the Government and

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one of them you pleaded guilty to?

A That is correct.

Q And that is the stock fraud case for which you are now serving time, correct?

A Correct.

Q Is there another matter that you were involved in that is the subject of an investigation by the Government right now?

A Yes, sir.

Q Something to do with letters of credit?

A There is an investigation of banks on Long Island and because -- I assume it is because the fact --

Q Talk up.

A I assume it is because of the fact that I have -- I'm now serving time. I received a commission on a loan arrangement with a particular bank and naturally my name is red-flagged any place I go now. Because of that I am now enveloped in an investigation. The subject of the investigation is not me, it is a bank.

Q But you have been questioned about it?

A I have been questioned, yes.

Q And you did get a commission for getting a loan for the bank, right?

A Right.

2 Q Who paid you the commission, the bank or the  
3 borrower?

4 A The borrower.

5 Q Did you disclose that to the bank?

6 A Yes.

7 Q Let's get to this agreement that you have made.  
8 This paper that I show you, Stoller Exhibit O for  
9 identification, is that the agreement that you made?

10 A Yes.

11 Q That is your signature on there, Mr. Feeney?

12 A Yes, it is.

13 Q And the other one is Mr. Sorkin's here, right?

14 A Right.

15 Q Were you there when he signed it?

16 A Yes.

17 Q And you had a lawyer?

18 A Mr. Michael Miller.

19 Q Mr. Michael Miller, he was there when you signed  
20 it?

21 A Yes.

22 Q Let's talk about this.

23 How did you come to enter into this agreement?

24 A I don't understand what you mean by the question.

25 THE COURT: Excuse me. May I see a copy of this

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document?

MR. SORKIN: Yes, your Honor.

Q Who suggested the agreement?

A I had asked for an agreement.

Q You asked for it?

A Yes.

Q Whom did you ask?

A I asked Mr. Sorkin.

Q You said, Mr. Sorkin, in substance, I would like to enter into an agreement with you, right?

A Yes.

Q An agreement means you are going to do something for him and he is going to do something for you, correct?

A Not necessarily for him.

Q Well, for whom?

A I assume for the United States Government.

Q For the Government?

A Yes.

Q United States Government?

A Yes.



2

Q He was going to do something for you and you were going to do something for the United States Government?

3

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A Yes.

5

Q Tell us first what you were going to do for the United States Government.

6

7

A I don't have the copy of the agreement in front of me

8

9

Q You remember it, don't you?

10

MR. GOULD: Can I have him on his recollection first, your Honor?

11

12

THE COURT: All right, fine.

13

Q You remember what you were going to do for the Government?

14

15

A Yes.

16

Q What were you going to do for them?

17

A First of all, I was going to plead guilty to one count of conspiracy. I don't remember the order. I don't have --

18

19

Q Just the substance of the deal.

20

A I was going to plead guilty to one count of conspiracy in the Coating Unlimited case in satisfaction for all counts. I would agree to commit no more crimes, to be involved in crimes. I would agree to cooperate fully with the United States Government on any and all questions

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Feeney-cross

1 that are put to me. I would be subject to perjury if I  
2 lied in my statements and if it was found out at any time  
3 during my cooperation with the Government or any time there-  
4 after that I had lied or given false testimony, or that  
5 I committed further crimes, that the agreement itself,  
6 anything that I had any testimony, any information that I  
7 had given to the Government, could and would be held against  
8 me for possible indictments in the future.  
9

10 Q That is all you were going to do for the Government,  
11 right?

12 A Agree to testify, yes.

13 Q What was the Government going to do for you?

14 A They were going to accept a plea of one count in  
15 satisfaction for 14 counts.

16 Q All right. Anything else?

17 A That's it.

18 Q You had some matters pending with the strike force  
19 of the Department of Justice, didn't you?

20 A That's correct.

21 Q Were they going to do anything for you in that?

22 A They refused to do anything in that.

23 Q They refused?

24 A Yes, sir.

25 Q Didn't they agree in that agreement to inform

1 gab-3

Feeney-cross

2 them of your cooperation?

3 A They would inform them of my cooperation, but they  
4 would not intercede on my behalf.

5 Q And that strike force case was one of the cases  
6 that was dropped, wasn't it?

7 A That's correct.

8 Q It just happened that way?

9 A I didn't say it just happened. I think that  
10 they -- if you would ask the individual involved, the U.S.  
11 Attorney, he will tell you it was their own investigation  
12 that prompted them to drop --

13 Q After you had signed this agreement, correct?

14 A No, I had met with the strike force on my own  
15 prior to that agreement. I had talked with the individual,  
16 Mr. Eberhardt involved, and I had made my own understanding  
17 with him without anything to do with Mr. Sorkin or anybody  
18 else here.

19 Q The fact is, they didn't drop the indictment until  
20 you signed the agreement, correct?

21 A I assume that's right.

22 Q Don't you know that that's right?

23 A I don't know the dates, Mr. Gould. You have the  
24 document in front of you. I don't have it in front of me.

25 Q Just tell us your best recollection. You signed

1 gab-4

Feeney-cross

2 the agreement, this paper, Stoller Exhibit O for identifica-  
3 tion --

4 A If you would tell me the date on that --

5 Q You listen and answer my question. If you need  
6 help, maybe we will get it for you.

7 A Oh, fine, fine.

8 Q The fact is, at the time you signed this agreement,  
9 the indictment of the strike force, which was this --

10 MR. SORKIN: That is the Jerome Allen one.

11 MR. GOULD: Yes.

12 Q The strike force indictment was still pending  
13 against you, right?

14 A I assume you are telling me it was. I don't  
15 remember, Mr. Gould.

16 MR. GOULD: Mr. Sorkin will confirm it was.

17 MR. SORKIN: I will confirm that the nolle --

18 MR. GOULD: Fine. Then we don't have to fiddle-  
19 faddle around with a lot of papers.

20 Q After you signed the agreement, that indictment  
21 was dropped, correct?

22 A That's correct.

23 Q And then you pleaded guilty to one out of the 14  
24 counts in the Coatings Unlimited case, correct?

25 A Yes.

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Q And you got a sentence of one year?

A One year and a \$10,000 fine.

Q Have you paid the fine?

A No, I have not.

Q What else was the Government going to do for you,  
if anything?

A That was it.

Q That was it?

A That was it.

Q Was there any understanding of what penitentiary you  
would go to?

A No.

Q Nobody suggested to you if you signed this they  
would try to get you into Allenwood?

A No.

Q Allenwood -- what do they call Allenwood?

MR. SORKIN: Objection, your Honor, as to what  
Allenwood --

THE COURT: I don't see why we get into that,  
Mr. Gould.

MR. GOULD: I will explain it to your Honor.

THE COURT: You mean to say you would like to  
bring out whether anything was agreed upon as to Allenwood?

MR. GOULD: That is correct, what discussion there

1 gab-6

Feeney-cross

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2 was.

3 THE COURT: All right. Would you sharpen up  
4 your question then to that point?

5 MR. GOULD: Very good.

6 Q Was there any discussion at all about which peni-  
7 tentiary you would go to?

8 A At some time after I had been sentenced I had  
9 talked with Mr. Sorkin. I asked him if he knew where I  
10 was going. He said he did not. He said he assumed because  
11 of -- because of the nature of the charge, it would be some  
12 place like Danbury or Allenwood. It wasn't until I got to  
13 prison, to West Street, in New York, when I first found  
14 out where I was going because they don't even know themselves.

15 Q Mr. Feeney, have you committed perjury?

16 A No.

17 Q Have you ever testified falsely under oath in  
18 any court or proceeding?

19 A No, I have not.

20 Q Were you a defendant in a case called Securities  
21 and Exchange Commission against Harwyn Industries Corporation?

22 A Yes.

23 Q That was a case in which Mr. D'Onofrio was also  
24 a defendant?

25 A That's correct.

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Feeney-cross

2 Q Do you remember making an affidavit in that  
3 case, the Securities and Exchange Commission against  
4 Harwyn Industries Corporation and others, right?

5 A I don't remember.

6 Q You don't remember the affidavit?

7 A No, sir, I am sorry, I don't.

8 MR. GOULD: Would you be good enough to mark this  
9 as a Stoller exhibit for identification.

xxx 10 (Defendant Stoller Exhibit P was marked  
11 for identification.)

12 Q Before we get to this affidavit, I forgot to ask  
13 you something. Have you made an application for parole?

14 A No, I have not.

15 Q When did you start the service of your sentence?

16 A July 16.

17 Q When do you become eligible for parole?

18 A First eligibility is in November.

19 Q November?

20 A Yes.

21 Q Do you know whether your case is under considera-  
22 tion for parole?

23 A I am sure it is not because I haven't made  
24 application.

25 MR. SORKIN: I can't hear him.

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Feeney-cross

THE COURT: You have to speak up.

A I am sure it is not, because I have not made the application.

Q Why haven't you made the application?

A Because I am here. I am not up in Allenwood.

Q Can't you make it here?

A It is very difficult to make it from here.

Q It is a form, isn't it?

A It is not just a form. You have to meet with your case worker. My case worker is up in Allenwood.

Q Let's get back to Harwyn Industries. I show you this paper and I ask you if this is not a true copy of an affidavit which you made in that case in August 1970.

A Can I just read it?

Q You can look at it sufficiently to inform yourself whether it is a true copy or not. I don't mean to interrupt you, Mr. Witness.

Don't you remember that document?

A I really don't.

Q You don't have any recollection of it.

A I am just going to skim through it.

Q Do you have to skim through it?

THE COURT: Take your time. Go ahead.

THE WITNESS: I am afraid I do.



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Feeney-cross

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Q So, sir --

A I don't remember the document.

Q No recollection at all of it?

A I am sorry, I don't.

MR. GOULD: If your Honor please, there are two ways I can do it. I can get the signed original or I can get Mr. Sorkin's concession that it was filed and signed by him. If he doesn't remember, that is all right. We will do it the hard way.

MR. SORKIN: Let's do it the right way, not the hard way.

MR. GOULD: You tell me what the right way is. I will be glad to conform to your suggestion.

MR. SORKIN: Your Honor, the only way I can check this would be to check the SEC file in Harwyn.

MR. GOULD: It is in the clerk's office.

MR. SORKIN: That is why I say I have to check it.

MR. GOULD: He said the SEC files. We have a file --

MR. SORKIN: I will check the files up here. You may be right. I just don't recall it.

MR. GOULD: We will do it our own way unless you want to check and see --

MR. SORKIN: I will be happy to concede it.

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Feeney-cross

2 If you just give me the opportunity to check it -- I don't  
3 recall it right now.

4 MR. GOULD: Fine. We will come back to it.

5 MR. SORKIN: There are so many.

6 (Pause.)

7 Q Mr. Witness, do I understand you to tell us that  
8 you have absolutely no recollection of having signed and  
9 sworn to an affidavit in the form of a document you have  
10 just read, Stoller Exhibit P?

11 A That is right, I don't remember.

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Q You don't remember it at all?

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A Mr. Gould, I signed so many documents over the years, I don't remember that particular document.

5

Q You are not telling us you didn't sign it?

6

A I am not saying I didn't sign it. I am just saying that I don't remember it.

8

Q Let's see if we can refresh your recollection. Do you remember anybody telling you to sign such an affidavit?

10

A I don't emember anything about the affidavit.

11

Q It is a complete blank in your mind?

12

A A complete blank.

13

MR. SORKIN: Would you please keep your voice up. I can't hear you.

15

A It is a complete blank, yes.

16

Q We have it that you remember that you were a defendant in a case instituted by the Securities and Exchange Commission?

19

A Yes.

20

Q That the first defendant named was Harwyn Industries you remember that?

22

A That is correct.

23

Q Do you know how the case came out?

24

A Yes. I believe I know how it came out.

25

Q How did it come out?

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A I believe Harwyn Industries won that case.

2

Q Really?

3

A I believe so.

4

Q How did it come out as to you?

5

A The same was dismissed against us also.

6

Q I see. Did you have a lawyer in the case?

7

A Yes, I did.

8

MR. SORKIN: May we have an instruction that  
an SEC action is a civil action and not a criminal action?

10

MR. GOULD: I will give him a concession that it  
is a civil action for the purpose of an injunction which  
prevents wrongdoers from continuing on the path of wrongdoing.

11

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MR. SORKIN: Not quite.

14

MR. GOULD: That is the way I understood it since  
1943.

15

16

MR. SORKIN: Since it was conceded I will take that.

17

Q You don't remember any of the facts in the case?

18

A Mr. Gould, you asked me if I remember that par-  
ticular thing --

19

20

Q That is right.

21

A I don't remember that particular document.

22

Q We will come back to it when we get the original.

23

Mr. Feeney, as I understand it, you were at one  
time a member of a firm or participant in a company called  
D'Onofrio, Feeney & Kirschbaum, correct?

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Feeney-cross

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A Not exactly. It was D'Onofrio, Feeney, Kirschbaum & Company, Inc.

Q D'Onofrio, Feeney, Kirschbaum & Co., Inc., right?

A Right.

Q What was the business of that company?

A The company did mergers, acquisitions, private placements.

Q And the Mr. D'Onofrio involved in that is Ramon D'Onofrio, right?

A Yes, sir.

Q And what did you do?

A I did most of the work in the field. I would meet

Q You have to talk up.

A I would go out to companies, analyze the companies, the balance sheets, look at the companies for the possibility of them being acquired or to acquire other companies, be liaison between the companies that are doing the acquisitions, act in the capacity of a broker for the sale of these companies.

Q When did all this start? When did you get into this business with D'Onofrio & Kirschbaum?

A 1969.

Q And before that what had you been doing?

A I was president of a company called Educational

1 gb-4

Feeney-cross

2 Sciences Programs.

3 Q What was that?

4 A That was a company engaged in schools, correspond-  
5 ence schools, trade schools.

6 Q Was D'Onofrio in that too?

7 A D'Onofrio was a stockholder in that company, yes.

8 Q Didn't he get you into that company?

9 A Yes, he was instrumental in my going there, yes.

10 Q He got you the job?

11 A I would say he helped me, yes.

12 Q What happened to that company?

13 A I don't know. I haven't been in the company since  
14 1969.

15 Q Does the company still exist?

16 A I don't know.

17 Q Before that what did you do?

18 A Before that I was vice-president and general manager  
19 of a coffee company.

20 Q Coffee?

21 A Coffee Instants, Inc.

22 Q How long were you in that?

23 A About a year.

24 Q What happened with that company?

25 A That company was ultimately sold to Chock-Full-o-  
Nuts.

1 qb-5

Feeney-cross

2 Q Did you get any money out of that?

3 A No.

4 Q Before that what did you do?

5 A Intermitten small jobs but the key employment  
6 before that was with Evan's Amity Dairy of Amityville, New  
7 York.

8 Q Evan's what?

9 A Evan's Amityville Dairy.

10 Q That is the company that went into bankruptcy,  
11 right?

12 A That is right.

13 Q The bankruptcy in which you were indicted where  
14 it was dropped?

15 A That is correct.

16 Q How old are you now?

17 A Thirty-four.

18 Q What education do you have?

19 A I finished two years at Hofstra University.

20 Q In what fields?

21 A Business.

22 Q When you said you went out when you were with  
23 D'Onofrio and this other fellow, Kirschbaum, you went out and  
24 you investigated the companies?

25 A I don't call them investigating.

qb-6

Feeney-cross

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Q Studied?

A I looked at balance sheets. I looked at the potential of the company.

Q With what objective in mind?

A To see if there was compatibility between the companies I was looking at and other companies for the purpose of acquisitions.

Q Did you make any such deals, mergers or acquisitions?

A Yes.

Q How many?

A I would say in excess of seven or eight.

Q Do you know anything about balance sheets?

A I think I am reasonably equipped to read a balance sheet.

Q Were you the only technician in the firm, the one who studied the papers?

A No.

Q How about Mr. D'Onofrio, did he do the same kind of work you did?

A He did similar work. He was, I would say, more familiar with the stock market and the importance of that phase of it to whatever acquisitions were being made.

Q That firm of D'Onofrio, Feeney & Kirschbaum,



1  
2 Inc., was there a predecessor firm called D'Onofrio, Feeney  
3 & Company?

4 A That is correct.

5 Q When was that organized?

6 A I believe it was April or May of 1969, thereabouts.  
7 Maybe it was earlier.

8 Q Was that your first association with D'Onofrio?

9 A No.

10 Q Where else had you been associated with him?

11 A As I said before, he was a stockholder in  
12 Educational Sciences Programs and at Evan's Dairy he  
13 was the president of Evan's Dairy and he was my boss.

14 Q I see. He was the president of Evan's Dairy and  
15 you were an employee, right?

16 A Correct.

17 Q Is that where you met him?

18 A Yes.

19 Q When Evan's Dairy collapsed you went into this  
20 Educational thing, is that it?

21 A No.

22 MR. SORKIN: I object. I think we have been  
23 over this and I don't see how this is in any way related to  
24 Training With the Pros or the Government's direct case.

25 MR. GOULD: I am going to show a relationship

1 with Mr. D'Onofrio.

2 MR. SORKIN: He has gone over the background  
3 and his employment.

4 THE COURT: Go ahead, next question.

5 Q From Evan's you went into this educational thing?

6 A As I stated before, Mr. Gould, I had inter-  
7 mitten jobs trying to get permanent employment. My first  
8 permanent employment after Evan's Dairy was with a company  
9 called Coffee Instants.

10 Q Did D'Onofrio have anything to do with that?

11 A N o.

12 Q What did you do there?

13 A I got that job through an employment agency.  
14 There I was general manager and vice-president and I traveled  
15 all over the country selling coffee. Then from there --

16 Q You were the general manager and a salesman, right?

17 A That is correct.

18 Q While you were with Evan's, you were an employee,  
19 right?

20 A Yes.

21 Q You were not a stockholder of Evan's?

22 A No, I was not a stockholder. Let me clarify that.  
23 I had an agreement with Mr. D'Onofrio that was entered into  
24 within the last year before the collapse of the dairy, whereby  
25

1 at a certain point I would be entitled to purchase X number  
2 of shares of stock. I don't remember the amount, but I  
3 never did get the stock.  
4

5 Q While you were with Evan's did you and Mr. D'Onofrio  
6 set up certain retail outlets?

7 A I don't know whether you can say Mr. D'Onofrio  
8 and I. I think it would be more applicable to Mr. D'Onofrio  
9 than me. My function at Evan's Dairy was to run the routes  
10 and the route men.

11 Q All I want to know is, didn't you have an arrange-  
12 ment, you and Mr. D'Onofrio, under which you and he set up  
13 certain retail outlets for Evan's?

14 A Are you talking about stores?

15 Q Stores, yes.

16 A Evan's Dairy -- you have to be more specific,

17 Q Let's get more specific. Evan's Dairy was in  
18 the business of producing dairy products on a wholesale basis,  
19 wasn't it?

20 A Yes.

21 Q And they sold that to retailers?

22 A That's correct.

23 Q And at one point, am I not correct, sir, that  
24 you and Mr. D'Onofrio, he the president and you an employee,  
25

1 set up certain retail outlets?

2 A Do you mean did Evan's Dairy own stores?

3 Q No, I don't mean that. Didn't you and D'Onofrio  
4 own the stores?

5 A The only recollection I have of owning a store,  
6 if you want to call it that, I had purchased a block of  
7 stock, a small block of stock in a company that was going  
8 to eventually open up milk stores but before that ever got unde  
9 way I had sold my shares to somebody else.

10 Q Did you not participate with Mr. D'Onofrio in  
11 a plan to sell the products of Evan's Dairy to retail stores  
12 which you and he would own?

13 A No.

14 Q It never happened?

15 A No. I explained to you just a few moments ago  
16 that the only association I had with the prospect of owning  
17 certain retail stores was aborted mostly because the dairy  
18 folded before the stores were opened.

19 Q That prospect that you had, was D'Onofrio a partner  
20 in the prospect?

21 A I believe he was a stockholder. I don't know  
22 whether he was a partner.

23 Q You and he were the two stockholders, right?

24 A I was not only one of the stockholders. There  
25

2 are a number of stokcholders.

3 MR. GOULD: If your Honor please, I think I would  
4 like to offer the agreement in evidence.

5 MR. SORKIN: No objection, your Honor.

xxx 6 (Stoller Exhibit O was received in evidence.)

7 MR. GOULD: I would like to read this to the jury.

8 (Mr. Gould read Stoller Exhibit O in evidence  
9 to the jury.)

10 Q Mr. Feeney, you have not been prosecuted, have you,  
11 in any further cases since this agreement was made?

12 A No, I have not.

13 Q After you made the agreement, within a few days  
14 as I recall, you did appear before the grand jury, did you  
15 not?

16 A Yes, sir.

17 Q Let's confine ourselves only to one Philip Stoller,  
18 a defendant in this case. You did, eight days after signing  
19 that agreement, to wit, on November 19, 1973, appear before the  
20 grand jury and testify with respect to Mr. Philip Stoller?

21 A I believe that is the date, yes.

22 Q And between November 11, 1973 and November 19,  
23 1973, the date on which you testified, and I am referring  
24 to Government Exhibit 3511A, the grand jury testimony, between  
25 those two days, the 11th of November and the 19th, did you

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Feeney-cross

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confer with Mr. Sorkin?

A Yes, I believe I did.

F 5A

Q You told us in the agreement that you had already conferred with Mr. Sorkin before November 11th, the date of the agreement?

A I conferred with him about what?

Q Haven't you discussed Mr. Stoller and Mr. A-len with Sorkin before this?

A I don't remember. We had a number of conversations.

Q You said in here, didn't you, in the agreement on November 11th, James Feeney has been cooperating with the United States Attorney's office prior to the date of this agreement.

A That is right.

Q What does the word cooperating mean?

A It means to cooperate, to tell the truth.

Q To tell them?

A Right.

Q To talk with them?

A That is right.

Q You didn't do anything for the Government in terms of cooperation other than to sit with these fellows and tell them what you knew?

A That is right.

Q And it never changed from beginning to end, did it? What you told them never changed, did it?

1 jgrf 2 Feeney-cross

2 MR. SORKIN: I don't understand the question.

3 MR. GOULD: I will rephrase it. I want Mr.  
4 Sorkin's mind to be just as lucid as the witness'.

5 Q When you told them back in November 1973 what  
6 you knew about Mr. Stoller's participation in Training With  
7 The Pros you told them the same thing that you have told  
8 them here today?

9 A Yes, sir.

10 Q Your testimony has not changed?

11 A No.

12 Q Indeed it is exactly the same as what you told  
13 them back in 1973?

14 A The substance of what I am saying today is the  
15 same as it was then, yes.

16 Q I derive from that, Mr. Witness, that there might  
17 be some changes of detail.

18 A There is no change in detail.

19 Q So that as to substance and as to detail what you  
20 told them in '73 is identical with what you have told here  
21 today, correct?

22 A I can't be specific, Mr. Gould and say it is  
23 identical.

24 Q I must insist you be specific. Do you remember  
25 any single instance when in the course of your conversations



1 jgrf 3

Feeney-cross

2 with Mr. Sorkin or Mr. Doonan or anybody else connected  
3 with the prosecution you remembered something different  
4 between November 1, 1973 and today when you got on the  
5 witness stand?

6 A I remember the facts to be as I have presented  
7 them today.

8 Q And that is exactly what you told them back in  
9 November, that is all I want you to tell me, whether anything  
10 has changed.

11 A As you are familiar, Mr. Gould, it is very possible  
12 when you start a conversation or you try to recall  
13 facts and you are trying to reach into your memory,  
14 there may be things that after conversation I may have  
15 remembered, little facts that I did not remember exactly  
16 at the moment because each conversation that we would  
17 have would hit another area.

18 So that I can't say specifically the first questions  
19 that Mr. Sorkin put to me were the same questions he put to  
20 me thereafter. I can't say to you the conversations I  
21 had with him the first day would be the same as the last  
22 day. There may be different questions.

23 Q Within this very short time, November 19, 1973,  
24 eight days after you signed the agreement, you went before  
25 the grand jury, didn't you?

1 jgrf 4

Feeney-cross

2 A Yes, sir.

3 Q And you were sworn before the grand jury?

4 A That is right.

5 Q And you knew when you went before the grand jury  
6 that false statements before a grand jury constitute  
7 perjury?

8 A That is right.

9 Q And in the agreement that you signed you knew  
10 that if you did anything like that they could prosecute  
11 you for anything?

12 A That's right.

13 Q Isn't that what it said there?

14 A Yes.

15 Q So that I must assume that before November 19th  
16 when you went in before that grand jury and you were  
17 asked about Mr. Stoller, you carefully prepared yourself  
18 to answer the questions?

19 A I tried to recall the things as I remembered  
20 them, that is all.

21 Q You tried, did you not, to dredge up out of the  
22 recesses of your mind everything that you could remember  
23 about the subject of Training With The Pros?

24 A Are you talking about in front of the grand jury  
25 or prior to that?

1 jgrf 5

Feeney-cross

2 Q Before you went in there and you subjected your-  
3 self to the possibility of violating this covenant that  
4 you had made with the Government, Stoller Exhibit O.

5 A Yes, sir. I tried to remember everything else.

6 Q That is right.

7 So that the grand jury testimony that you gave  
8 represents the most careful distillation of your  
9 recollection on the subject of Stoller and Training With  
10 The Pros as of November 19, 1973?

11 A I can only answer you were a statement. The  
12 questions put to me at the grand jury, I answered  
13 those questions put to me at the grand jury. I wasn't  
14 asked to give solicitation or volunteer information.  
15 I answered those questions truthfully in front of the  
16 grand jury.

17 Q Were you told not to volunteer anything?

18 A No.

19 Q Were you told not to tell about anything?

20 A I was told to answer the questions and tell the  
21 truth.

22 Q But no one suggested to you that you should hold  
23 back anything?

24 A I don't think there was any question there that  
25 asked me to volunteer anything.

1 jgrf 6 Feeney-cross

2 Q Say that again?

3 A I don't think there is a question there that asked  
4 me to volunteer anything.

5 Q All I want to know is you did talk with Mr.  
6 Sorkin before you went into the grand jury room, didn't  
7 you?

8 A Yes.

9 Q Several times?

10 A Yes.

11 Q How many times have you read your grand jury testi-  
12 mony in the last five weeks?

13 A Once.

14 Q In the six times you were over here you only  
15 saw it once?

16 A That is right.

17 Q When was that?

18 A Last Friday.

19 Q Did you get anything else to look at on Friday?

20 A Yes.

21 Q The testimony of Mr. D'Onofrio?

22 A No.

23 Q Did anybody read you any of Mr. D'Onofrio's  
24 testimony?

25 A No.

Q You never looked at it?

1 jqrfr 7

Feeney-cross

2 A No.

3 Q Did anybody tell you what Mr. D'Onofrio had  
4 testified to?

5 A No.

6 Q The subject was never mentioned?

7 A I asked about it and I was told that I was not  
8 permitted to know, period.

9 Q Who told you that?

10 A Mr. Sorkin.

11 Q So we have it clearly, you asked "What did D'Onofrio  
12 testify to"?

13 A I didn't come out and ask that way.

14 Q What was it you asked?

15 A I asked in conversation did Mr. D'Onofrio testify  
16 and Mr. Sorkin said to me that those witnesses who have  
17 been called is of no concern to me and that is the way he  
18 answered me.

19 Q That was the whole conversation?

20 A Relative to that, yes.

21 Q So as you set here now you didn't know what  
22 D'Onofrio said in this case?

23 A As I sit here now I don't even know if Mr. D'Onofrio  
24 testified.

25 Q Now, sir, let's go to your grand jury testimony.

jqrf 8

Feeney-cross

You testified here today that you had an account in the Bank Hofmann, correct?

A I didn't testify to that, no.

Q You never said that?

A I don't think the question was put to me.

Q Did you have an account there?

A Yes.

Q Didn't you refer to it this morning?

A I referred to somebody else's account.

Q Whose account did you refer to this morning?

A I referred to an account held by Mr. Stoller and Mr. Allen and Mr. D'Onofrio.

Q That is the only one?

A I think -- I am sorry. We did discuss about my problems with the bank, you are correct. I stand corrected.

Q What do you stand corrected of?

A I did have an account.

Q Didn't you testify this morning that there was a reference to your account at the Bank Hofmann?

A Yes, you are correct.

Q Didn't you testify this morning about opening an account at the Bank Hofmann?

A I don't remember saying about opening but I did

1 jgrf 9 Feeney-cross

2 say I had an account at Bank Hofmann.

3 Q What is your best recollection as to who arranged  
4 for you to open the account in Bank Hofmann?

5 A Mr. D'Onofrio made the arrangements for me.

6 Q When was that, sir?

7 A I believe it was very late in 1969 or early 1970.  
8 I can't be sure.

9 Q Why did you need an account, a secret Swiss  
10 account?

11 A There was a company that was being formed called  
12 D'Onofrio, Feeney, Argay in Switzerland and it was  
13 a corporation. We were going to do business in Switzerland.  
14 We were doing business in Switzerland as an adjunct to  
15 our operation in New York.

16 Q Who is we, you and D'Onofrio?

17 A Myself and D'Onofrio and others. They were Swiss  
18 citizens. It was felt it would be much more convenient if  
19 there was some method that the bank could transact on my  
20 behalf and so to operate the Swiss company. So I opened up  
21 an account.

22 Q You didn't discuss that with Stoller, did you?

23 A The Swiss bank account?

24 Q Yes, that you were going to open an account  
25 in the Bank Hofmann.

1 jgrf 10

Feeney-cross

2 A No.

3 Q You never mentioned it to him?

4 A Mr. Stoller and I had a discussion about my  
5 account, not just on one occasion, a number of occasions.  
6 But it was after the fact.

7 Q Mr. Stoller had nothing to do with opening the  
8 account for you, is that correct?

9 A No, he did not.

10 Q That was D'Onofrio's doing?

11 A That is correct.

12 Q You remember telling us about a meeting that  
13 you attended in the fall of 1968, I think. You attended  
14 some kind of meeting at Stoller's office apartment in the  
15 fall of 1968, right?

16 A I think we said that time was in the early winter --  
17 late winter, January or February, if I remember correctly.  
18 I think we talked about '68. We referred to the first  
19 meeting with D'Onofrio at my house.

20 Q At the end of '68 you met with D'Onofrio?

21 A Yes.

22 Q That is the one where Muriel Barter was there  
23 from time to time?

24 A That's right.

25 Q Who is Muriel Barter?



1 jgrf 11 Feeney-cross

2 A Mrs. Barter is, I believe, the common-law wife  
3 with Mr. D'Onofrio.

4 Q That is the one where D'Onofrio told you about the  
5 self-underwriting deal with Training With The Pros, right?

6 A Yes, sir.

7 Q Why did he talk to you about it then?

8 A Because Mr. D'Onofrio was looking for participa-  
9 tion in the offering, the public offering. In order to have  
10 a company go public you have to have stockholders, original  
11 stockholders. He asked me if I would become one of  
12 the original stockholders.

13 Q You would become?

14 A If I would become a stockholder in the company,  
15 yes.

16 Q Did you become a stockholder?

17 A Yes.

18 Q How much did you get?

19 A 1,000 shares.

20 Q And then you provided Mr. Bundy as another stock-  
21 holder, right?

22 A That is right.

23 Q So it is after that that you went to Mr. Stoller's  
24 apartment and had the conversation, correct?

25 A That is correct.

1 jgrf 12

Feeney-cross

2 Q And we have it clear that at that conversation  
3 we have you present, D'Onofrio, Stoller, Allen and a gentle-  
4 man named Arden?

5 A No, a gentleman named Joe, I believe.

6 Q You never heard his last name?

7 A I have seen him a number of times since then.  
8 He is a short fellow.

9 Q You don't know who he is?

10 A I don't remember.

11 Q Just Joe?

12 A I think that is his name, Joe.

13 Q You think you know Joe if you saw him?

14 A I probably would. I wouldn't want to testify to  
15 it but I probably would.

16 Q And in this conversation -- and this is before  
17 the public offering, right, of Training With The Pros?

18 A Yes, sir.

19 Q And in this conversation, as I recall it, it was  
20 D'Onofrio who brought you to the meeting?

21 A Yes.

22 Q You were his guest?

23 A Yes, sir.

24 Q In this conversation which you told us about  
25 this morning, do you remember some reference to the fact  
that certain stock would be made available to Allen

1 jgrf 13 Feeney-cross  
2 and Stoller?

3 A In the conversation Mr. Stoller, Mr. Allen both  
4 told me that they were going to receive substantial blocks  
5 of stock in Training With The Pros.

6 Q What I would like to know, sir, is whether in  
7 the course of the conversation it was said by anybody  
8 that the stock would be made available to him?

9 A I don't remember the word available being used.

10 Q You don't recall that?

11 A No, I don't.

12 Q You have worked in securities for some time now,  
13 haven't you?

14 A I would say so, yes.

15 Q You know there is a difference between stock being  
16 received and stock being available?

17 A Yes, sir.

18 Q Very significant difference, isn't there?

19 A Yes, there is.

20 Q It is a difference between having a call and  
21 having an option?

22 A Yes.

23 Q So that the word available, if I said to you  
24 with respect to the securities transaction that I have  
25 10,000 shares of AT&T available to me, you would understand

1 jqrfr 13a Feeney-cross 1324a

2 what I meant?

3 A Yes, sir.

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Feeney-cross

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2 BY MR. GOULD:

3 Q You would understand that I have a call on it,  
4 correct?

5 A Right.

6 Q You would not understand that they could put it  
7 to me?

8 A That is correct.

9 Q So that if I used the word available with respect  
10 to a securities transaction -- let's use my example again.  
11 I have 10,000 shares of AT&T available to me, that means  
12 I can take it if I want it, right?

13 A That's right.

14 Q On the other hand, if I said to you I have to  
15 receive 10,000 shares of AT&T, that means they can put it  
16 to me and I have to take it even though I don't like the  
17 price, correct?

18 A That's right.

19 Q So now you tell us that you do not recall that  
20 the stock of Training With The Pros was to be available  
21 to Stoller and Allen?

22 A Not in those words, no.

23 Q Not in those words.

24 Grand jury testimony, page MTC 3, November 19,  
25 1973.

2 I will read the question before it. Then we will  
3 come to the one here.

4 "Q Now, am I correct, Mr. Feeney" -- this is Sorkin  
5 talking. This is his question.

6 "Q Am I correct, Mr. Feeney, at this meeting between  
7 Mr. Stoller, Mr. Allen and Mr. D'Onofrio, it was discussed  
8 in Mr. Stoller's presence that the stock would be purchased  
9 by nominees of Mr. Stoller, Mr. Allen and Mr. D'Onofrio  
10 and then repurchased by them and placed in their accounts  
11 in Switzerland?"

12 "A At the time when I was at this meeting I would  
13 not consider myself a sophisticated stock purchaser or dealer."

14 You gave that answer to that question, right?

15 A Yes.

16 Q Next question:

17 "Q But you do now?

18 "A I do now. To the best of my recollection, the  
19 way it was going to work was that stock would be available  
20 to Messrs. Stoller and Allen through D'Onofrio, both on the  
21 inception and after the opening of the stock."

22 Did you give that answer to that question?

23 A Yes.

24 Q And when you answered that, you did regard  
25 yourself as somebody sophisticated in dealing in securities,

1 gwrf 3

Feenev-cross

1327

2 right?

3 A That is right.

4 Q And as you told us before the word available  
5 meant that they had an option to take it down or not to  
6 take it down, isn't that right?

7 A If you are talking about the word available as  
8 a terminology, you could assume that your description is  
9 correct --

10 Q Excuse me. Isn't my description exactly what your  
11 description was five minutes ago?

12 MR. SORKIN: I ask he be allowed to finish his  
13 answer. He was interrupted by Mr. Gould.

14 Q Let's hear the rest of it. Then we will come  
15 back to my question.

16 A All right. I was recalling a conversation and  
17 trying to summarize what was going to take place at a certain  
18 point, and at that particular moment in that room it was  
19 my understanding both from Mr. Stoller, Mr. Allen, that they  
20 had made their arrangements for the stock and whether it  
21 was physically delivered to them or not, I don't know  
22 at that point. When I use the phrase available, I'm  
23 referring to the fact of the actual delivery because I  
24 don't know if it was physically delivered on that spot  
25 to them at that moment.

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Feeney-cross

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Q Will you tell me what you are talking about?  
Was there even a possibility of physical delivery on the  
spot at that meeting?

A I'm not talking about at that particular meeting,  
I'm talking about whether they had in their possession  
the shares at the time of this meeting, I don't know.

Q This was before the public offering, wasn't it?

A That is correct.

Q And you were a sophisticated -- sophisticated  
stock purchaser or dealer?

A Yes.

Q And you didn't know whether the stock was physically  
susceptible of delivery at that meeting?

MR. SORKIN: He said he was not at that meeting  
a sophisticated --

MR. GOULD: I'm very grateful for that suggestion.  
With your Honor's permission now that we have got the  
confusion, I will read it again.

"A At the time when I was at this meeting I would  
not consider myself a sophisticated stock purchaser or  
dealer.

"O But you do now?"

Now is November 1<sup>st</sup>. 1973.

"A But I do now, and to the best of my recollection,"



2 and so on.

3 You do now regard yourself as a sophisticated  
4 purchaser or dealer?

5 A Yes.

6 MR. SORKIN: I object. He is testifying as to  
7 what his understanding was then when he was at the meeting.

8 THE COURT: Just a moment. The jury can fathom  
9 this, Mr. Sorkin, either way they see fit and we don't want  
10 any comments from you or other counsel.

11 One more time, Mr. Gould, and then let's move on  
12 to something else.

13 MR. GOULD: I just want to get something clear.

14 THE COURT: Fine.

15 Q On November 19th when you testified you were  
16 sophisticated, weren't you? November 19, 1973?

17 A Yes.

18 Q And when you were sophisticated, you knew that  
19 there was no way in which the stock could be "available  
20 for physical delivery prior to the public offering?"  
21 Didn't you know that?

22 A Yes.

23 Q So when you used the word available in your sworn  
24 testimony back in November, the only thing, and you tell me  
25 if you think I'm wrong, that it could possibly mean to

a sophisticated securities person was that they had a call on the stock; isn't that right?

A Yes, sir.

Q As I recall your testimony this morning, you said that Stoller told you people at this same meeting, this is this early part of '69, Stoller told you people how he was going to move the stock up right thorough some tears, wasn't that the word used?

A Yes, sir.

Q Who was going to do this movingup, Mr. Stoller or Mr. D'Onofrio?

A The moving up was to be taken care of by Mr. Stoller and Mr. Allen and Mr. D'Onofrio was to make sure that the shares that -- of the original stockholders were to be held intact.

Q Do you remember testifying that Stoller said he would aid D'Onofrio in moving the stock to a higher price?

A I don't know.

Q Isn't that right?

A I don't remember it.

Q Let's see if we can refresh your recollection.  
Question, same old page, MTC-3.

Q Now, tell me what Mr. Stoller said first at that meeting.

2 "A Well, At the meeting Mr. Stoller discussed that  
3 he would aid Mr. D'Onofrio in moving the security to a  
4 higher price through contacts."

5 Did you give that answer to that question?

6 A Yes.

7 MR. SORKIN: The rest of the answer, "Contacts  
8 he had on Wall Street."

9 Q "Contacts he had on Wall Street."

10 Do you remember that?

11 A Yes, sir.

12 Q You gave that answer?

13 A Yes, sir.

14 Q Is that what Stoller said, he would help Mr. --  
15 he would aid Mr. D'Onofrio in moving the security to a  
16 higher price through contacts he had in Wall Street?  
17 Do you remember that?

18 A Yes, sir.

19 Q He didn't mention any contacts he had in Switzerland,  
20 did he?

21 A Mr. Stoller definitely did talk about Switzerland.

22 Q He did?

23 A If you are talking about the meeting --

24 Q Only one meeting we are talking about. What did  
25 he say, either do it through contacts in Wall Street  
or in Switzerland?

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Feeney-cross

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A I'm sorry. I misunderstood your question.

He is talking about Wall Street in this particular case.

2 Q No mention of Switzerland then, correct?

3 A Switzerland was certainly mentioned in the conversa-  
4 tion. As to this answer here, I don't think the question  
5 was posed to me at that point about whether it was Switzerland  
6 or not.

7 Q The question was, "Well, tell me what Mr. Stoller  
8 said first at that meeting."

9 What did you tell us this morning he said first  
10 at that meeting?

11 A As I said to you this morning, the substance  
12 of the conversation -- whether it was the first word out of  
13 the conversation, I couldn't be sure. The substance of the  
14 conversation was substantially what we talked about just now.

15 Q Didn't you tell us this morning right off the bat  
16 Mr. Stoller talked about how he was going to pump this stock  
17 into Switzerland?

18 A I think we talked about this morning -- the first  
19 thing we talked about was the way the stock was going to move  
20 up, it was going to be from broker to broker. I think I  
21 used the word "From A broker to B broker to C broker."

22 Q We do have one thing, that your recollection this  
23 morning was different from what your recollection was on  
24 November 1973?

25 A I don't think so. I think they are substantially

1 the same.

2  
3 Q On November 19, 1973, when you were asked, "Tell  
4 me what Stoller said first at that meeting," you answered,  
5 "Well, at the meeting Mr. Stoller discussed he would aid  
6 Mr. D'Onofrio in moving the security to a higher price through  
7 contacts he had in Wall Street."

8 That is sworn testimony?

9 A That is correct.

10 Q But that is not what you said this morning, is it?

11 MR. SORKIN: Objection. He is not finished,  
12 your Honor.

13 THE COURT: Finish your answer.

14 Q Finish your answer, by all means. I am sorry  
15 to cut you off.

16 A I was --

17 Q I am sorry for my enthusiasm.

18 A I was giving Mr. Gould -- I was giving a consoli-  
19 dated or summary statement to a conversation in response  
20 to a question that was put to me here. This morning I  
21 believe that the question was more direct.

22 Q The question this morning was sharper than the  
23 one you were asked in the grand jury?

24 A Sharper, more directed.

25 Q I see.

1 gab-3

Feeney-cross

2 "Q Tell me what Mr. Stoller said first at that meeting."  
3 That is very fuzzy to you, right?

4 A I think the word "first" is what makes it fuzzy.

5 Q What makes it fuzzy about that?

6 A Talking about to try to have you understand  
7 what I am saying. If you want to say --

8 Q Don't do me any favors. You don't have to  
9 make me understand anything. Just answer my questions.

10 What is there about that question that leads you to  
11 give this -- what did you call it before, this answer?

12 A Summary.

13 Q Summary answer. What is wrong with the question  
14 or what is good about the question?

15 MR. SORKIN: I object, your Honor. I think  
16 we have been over this. I think it is the jury's recollec-  
17 tion as to what he said this morning in relation to the  
18 street --

19 MR. GOULD: I think it is too, your Honor. I  
20 propose on summation to remind the jury by reference to the  
21 transcript what he said.

22 MR. SORKIN: We both will, your Honor.

23 MR. GOULD: Right now I have the right to test this  
24 man's recollection.

25 THE COURT: I think if you want my view seriously,

1 gab-4 Feeney-cross

2 I would say you have made the point you are obviously seeking  
3 to make. Let's turn to something else.

4 MR. GOULD: Very good, your Honor.

5 Q In this same conversation, sir, this is the  
6 conversation in the early part of 1969, the first time you  
7 ever met Mr. Stoller on the subject of Training With the Pros?  
8 Remember it now?

9 A Yes.

10 Q Do you remember a reference to any particular Wall  
11 Street firms that he proposed to use?

12 A I thought he had used the words, the brokerage  
13 house either he or Jerry used, Dominick & Dominick.

14 Q And how was it used?

15 A That these were brokerage houses that he and Jerry  
16 had worked with in the past and they would be the ones who  
17 would help support the market.

18 Q You knew that Dominick & Dominick was a respected  
19 Wall Street firm at that time, didn't you?

20 A Yes.

21 Q Did you have any reason to believe that a firm  
22 like Dominick & Dominick would lend itself to a manipulation  
23 at that time?

24 THE WITNESS: If you wouldn't mind, just ask me  
25 the question again.



gab-5

Feeney-cross

1 gab-5

2 MR. GOULD: Would you read what I asked this

3 gentleman?

4 (Question read.)

5 A I think again at that time I was not that sophisti-

6 cated and I don't really believe I knew who Dominick &

7 Dominick was.

8 Q Didn't mean anything to you?

9 A Really didn't.

10 Q In that conversation didn't Stoller tell you that

11 he had an account in Switzerland?

12 A The term "account" -- I don't remember the exact

13 word account being used.

14 Q But you do remember a reference to his connection

15 in Switzerland?

16 A Yes, no question.

17 Q There is no question in that meeting, in that first

18 meeting, he told you he had a relationship with the Bank

19 Hofmann?

20 A Yes.

21 Q That is clearly in your mind, right?

22 A Yes.

23 Q It was in that meeting?

24 A Yes.

25 Q All right. Now, your testimony here, sir, Question

1 MTC4:

2 "Did Mr. Stoller ever tell you that he had an account  
3 in Switzerland and he was a client of Bank Hofmann?  
4

5 "A Yes, but not at that time."

6 MR. SORKIN: I object. He asked relationship with  
7 Bank Hofmann. He didn't ask an account.

8 MR. GOULD: I asked both, your Honor.

9 THE COURT: Again, what you gentlemen love to  
10 argue about is something that is of no consequence to me  
11 or to either of you.

12 Go ahead.

13 Put your question again so that we don't have any  
14 more interruptions and we make this point and get away  
15 from it, whatever it may be.

16 MR. GOULD: I am just a man trying to cross-  
17 examine the witness, your Honor.

18 THE COURT: Fine.

19 MR. GOULD: This kind of thing doesn't fool me any  
20 more than it does you.

21 THE COURT: I am not saying whether I am fooled  
22 or not. I want you to have the right to finish your  
23 question and I want the witness to have a right to answer it.

24 Q I want you to tell us whether in that meeting at  
25 that time Stoller ever mentioned that he had an account in

1 gab-7

Feeney-cross

2 Switzerland or that he was a client of Bank Hofmann?

3 A I don't recall him saying he had an account  
4 there.

5 In reference to Bank Hofmann in Switzerland, I  
6 do recall a conversation with him about it.

7 Q So when you were asked on November 19, 1973:

8 "Q Did Mr. Stoller ever tell you that he had an account  
9 in Switzerland and that he was a client of Bank Hoffman,"  
10 your answer was, "Yes, but not at that time." Referring to  
11 that meeting, your answer was in error?

12 A No, that's not true.

13 THE COURT: We will suspend now for luncheon,  
14 2:15, ladies and gentlemen.

15 (Luncheon recess.)

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2 AFTERNOON SESSION

3 2:15 p.m.

4 J A M E S W. F E E N E Y, resumed

5 the stand and testified further as follows:

6 (In open court, jury absent.)

7 THE COURT: I understand there is some problem  
8 with Harwyn that is gathering dust in some warehouse.

9 Does somebody wish an extra copy?

10 MR. GOULD: We have it. I don't think it helps  
11 us too much. I think there is on August 20, 1970 there  
12 is a reference to affidavits without identifying the  
13 names on them.

14 MR. SORKIN: There is one help, your Honor.  
15 That says an affidavit in answer to the complaint. I  
16 think if we go back on this and find the answering affidavits,  
17 that will help us. I would call the SEC, Don Malawsky;  
18 to have him start looking. I will get an answer for Mr.  
19 Gould this afternoon.

20 THE COURT: May I suggest you finish your cross  
21 examination. If we have to recall this man, we will  
22 recall him.

23 MR. GOULD: Sure. I assume that. We may call  
24 D'Onofrio back when we get those vouchers, too.

25 THE COURT: In this splendid case I would assume

2 anything. Anything else you want me to assume, I will  
3 undoubtedly assume.

4 Let's get the jury in.

5 MR. SORKIN: We intend to call Mr. Doonan,  
6 your Honor, after Mr. Feeney.

7 THE COURT: All right.

8 (Jury enters courtroom.)

9 CROSS EXAMINATION

10 BY MR. GOULD (Continued):

11 Q Mr. Feeney, you remember my questions to you  
12 this morning about the extent of the preparation before  
13 you went into the grand jury on November 19, 1973.

14 Am I not correct, sir, that starting in September  
15 1973, specifically about the middle of the month, you  
16 were engaged in conversations with Mr. Doonan?

17 A Yes, sir.

18 Q And indeed I am reminded -- I will withdraw  
19 that.

20 You started with Mr. Doonan in September 1973.

21 Was that at the beginning of your cooperation  
22 with the Government?

23 A No, I talked with the Government earlier than that.

24 Q How earlier, sir?

25 A I'm sorry. September '73, did you say? That

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Feeney-cross

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would be last year.

Q That would be --

A '72 I think was the time I started.

Q '72?

A Yes, sir.

Q With respect specifically to the subject of Training With The Pros, when did you start talking with them about that?

A The name Training With The Pros had come up a number of times. I don't specifically remember when it was that we sat and talked about it.

Q Certainly it was before September 1973?

A I'm sure we had conversations about it before that time.

Q And the substance of your conversation was, you started to tell them what you knew about Training With The Pros, is that not right?

A I don't remember.

Q You have no recollection?

A No.

Q At any rate, on September 13, 1973 you did engage in a conversation with Mr. Doonan on the subject of Training With The Pros?

A Yes, sir.

2 MR. GOULD: That is conceded, is it not, Mr.  
3 Sorkin?

4 MR. SORKIN: Let me just check the date.

5 MR. GOULD: No, it is the 14th.

6 MR. SORKIN: We will concede that, yes, sir.

7 Q On that date, I am right, am I not, you told him  
8 about all of the people that you could remember who were  
9 concerned about Training With The Pros?

10 A I don't remember the questions that Mr. Doonan  
11 put to me at that date.

12 Q Sir, if I suggest to you that on that date  
13 according to the testimony of Mr. Doonan, you mentioned  
14 Ramon D'Onofrio, Jerry Allen, Glen Wu, Kirschbaum,  
15 Moss, Pfingst, Barton, Feeney, Finkelstein, Bobby Benjamin  
16 and Philip Stoller?

17 A I guess that would be correct.  
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2 Q That would be right, that refreshes your recollec-  
3 tion?

4 A Yes, sir.

5 Q On that date you described for him that you were  
6 to get some stock and that there were other friends that  
7 were involved as nominees, correct?

8 A Yes.

9 Q So you pretty well knew the subject of Training  
10 With the Pros as early as September 1973?

11 A Yes, sir.

12 Q And then after September 14, 1973, you had addi-  
13 tional conversations with Mr. Doonan?

14 A Yes, sir.

15 Q Would you try and tell his Honor and the jury  
16 how many such conversations you had with him on the subject  
17 of Training With the Pros -- that is all we are interested  
18 in here -- between September 14, 1973, and the date when you  
19 appeared before the grand jury, which is November 19.

20 A I just couldn't even guess at it.

21 Q At least four or five would be a good guess,  
22 good estimate?

23 A I wouldn't know. I wouldn't know how to answer  
24 the question.

25 Q You have no recollection?



1 gab-2

Feeney-cross

2 A No, because most of the conversation I had at  
3 least I believe was with reference to the Coatings case.

4 Q So that you are unable to tell us at this time  
5 how many conversations you had on the subject of Training  
6 With the Pros between September 14 and November 19?

7 A That's correct.

8 Q Let's see if we can help you now. You did have  
9 a long conversation with him, did you not, on September 19?  
10 I am basing that on some notes of Mr. Doonan which bear  
11 that date.

12 A If that is the date -- I know I did meet with him.

13 MR. GOULD: Mr. Sorkin, I am sure you will concede  
14 the conversation on that date.

15 MR. SORKIN: I will concede that Mr. Doonan took  
16 notes on the 19th. I can't concede what his memory was  
17 as to when they met. I don't know when they met. They may  
18 have met the 18th or the 19th. Those are Doonan's notes which  
19 he took on the 19th.

20 MR. GOULD: I have perhaps mistakenly assumed that  
21 we were given contemporaneous notes --

22 MR. SORKIN: I can't say. They are notes of  
23 conversations.

24 MR. GOULD: Very well. With your Honor's permission,  
25 I will inform the witness there are notes dated September 19,

1 gab-3

Feeney-cross

2 1973, which are marked as Government Exhibit 3511F.

3 Q And I will suggest to you that on that date or very  
4 close to it you did have a conversation with Doonan on the  
5 subject of Training With the Pros.

6 Does that help you -- you will accept that, won't  
7 you?

8 A Yes, sir.

9 Q At that time you described for Mr. Doonan whatever  
10 you knew about Training With the Pros, did you not?

11 A I don't know whether we went into every single  
12 thing with Training With the Pros.

13 Q You did your best on that date to give him the whole  
14 story?

15 A I would say that there would be questions put to  
16 me and I tried to answer them.

17 Q You told him on that day, did you not, about sixty  
18 or 70,000 shares were available to the public?

19 A I don't recall the figures.

End 1B 20

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1 Q I show you his notes and see if that refreshes  
2 your recollection. You see, don't you, this is Mr. Doonan's  
3 handwriting, about sixty or 70,000 shares public, correct?  
4

5 A Yes.

6 Q Does that refresh your recollection that you told  
7 him that about sixty or 70,000 shares were public?  
8

9 A Yes, sir.

10 Q That was in error, was it not?

11 A I don't know.

12 Q Don't you know how many shares were made public?

13 A I don't remember.

14 Q You have no recollection at all?

15 A I don't remember.

16 MR. SORKIN: I can't hear you.

17 THE WITNESS: I don't remember how many shares  
18 went public.

19 Q You read the offering circular, did you?

20 A At that time, yes.

21 Q But you don't remember how many shares?

22 A No, I don't.

23 Q As I sit here now, you don't?

24 A No, I don't. I am sure I did at that time.

25 Q You told him also at that meeting that the entire  
box was bought by nominees at either G.K. Scott, and then

2 the word appears, George Kavokian, or Amswiss, then the  
3 words appear Glen Wu or both, didn't you tell him that?

4 A I don't know whether we talked about the entire  
5 block of stock.

6 Q You tell me what it means. It says here, "Almost  
7 the entire box was bought by the nominees at either G.K.  
8 Scott, George Kavokian or Amswiss Glen Wu (or both)"?

9 A I think what Mr. Doonan is referring to there in  
10 my conversation to him was he asked me where some of these  
11 nominees would be and I believe that it is just a covering  
12 statement inreference to Kavokian who was a stock broker.  
13 He asked me where the shares would be, where the nominees  
14 would be.

15 Q Mr.Feeney, didn't you tell the jury this morning  
16 what the word "box" meant?

17 A Yes, sir.

18 Q And the box meant what?

19 A Box meant to gather all the shares of stock.

20 Q All the shares would go into the box?

21 A Yes.

22 Q So that if you were right about it being sixty  
23 or 70,000, sixty or 70,000 would have gone into the box?

24 A If it were sixty or 70,000.

25 Q And that is what you meant here when you said,

2 "Almost the entire box was bought by the nominees at either  
3 G.K. Scott, George Kavokian or Amswiss,"right?

4 A Yes.

5 Q Or both?

6 A Yes. I believe I said almost all.

7 Q Almost all, that is correct. You didn't mention  
8 at that time any of them going to nominees of Stoller, did  
9 you?

10 A No, I did not.

11 Q You didn't mention at that time any of them going  
12 to nominees of Mr. Allen?

13 A No.

14 Q As far as you could remember on that day, in  
15 September of 1973, September 19, as far as you could remember  
16 almost all the stock went to these two people, G.K. Scott  
17 or Amswiss or both of them?

18 A Not exactly, no. That is taken out of context.

19 Q Is it out of context?

20 A It is.

21 Q What do you want to add to it to put it into  
22 context?

23 A The fact of nominee itself, the word "nominee,"  
24 this is just an excerpt from a conversation I had with  
25 Mr. Doonan. I am sure the conversation was more in detail

2 than just the notes that are here.

3 Q In other words, you didn't say to him, did you,  
4 you did not say to him, "Almost the entire box was bought by  
5 the nominees at either G.K.Scott, George Kavokian or Amswiss,  
6 Glen Wu or both"?

7 A I am not saying I didn't say that.

8 Q You are saying you did say that.

9 A I am saying that I believe the misunderstanding  
10 is with the word nominee. I believe that you are asking  
11 me the question: Were the only nominees Kavokian and  
12 Amswiss, and I am saying to you that was not the case. There  
13 were nominees beyond them.

14 Q What other nominees on that day did you mention  
15 other than Kavokian and Glen Wu?

16 A To my recollection I thought I mentioned every  
17 one. I guess I had not. I thought I mentioned Mr. Allen  
18 and Mr.Stoller too.

19 Q As providing nominees?

20 A As having nominees.

21 Q Is that your present recollection?

22 A Yes, sir.

23 Q That you did mention them as having nominees?

24 A In the period of time, Mr. Gould, that I was  
25 asked questions I was asked a number of questions over a

qb-5

Feeney-cross

number of meetings. The substance of those questions at some of those meetings were a conversation which I did disclose to Mr. Doonan that Mr. Stoller and Mr. Allen did have nominees and that they had told me they had nominees.

Q At any rate --

A I don't recall which specific meeting no more than I can recall which meetings I talked about Training With the Pros.

Q You mean it is a blur in your mind?

A No, I would say it is difficult for me to pin a date on each conversation.

Q You do remember the time of your conversations at which Mr. Stoller was present, do you not?

A Yes.

Q You remember a conversation with Mr. Stoller in the early part of 1969, do you not?

A I do.

Q And you remember what each one of the participants said to the others?

A As I said to you this morning, I said the substance of those conversations I remember.

Q Now I want you to tell me if it was not the substance of your communication with Investigator Doonan on September 14, 1973, that "about 60,000 or 70,000 shares

1 qb-6

Feeney-cross

2 public"?

3 MR. SORKIN: That is the 19th you are looking  
4 at.

5 Q Yes. "About 60,000 or 70,000 shares public,"  
6 continuing the quote "almost the entire box was bought  
7 by the nominees at either G.K.Scott, George Kavokian, or  
8 Amswiss, Glen Wu or both."

9 That was the substance of what you told them,  
10 wasn't it?

11 A Yes, sir.  
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2 Q And you say now, as I understand you, that there  
3 should have been added to that another sentence, "Plus  
4 nominees of Stoller and Allen"?

5 A I can't be sure it should be added.

6 Q You say you mentioned that.

7 A I believe at some time during my conversations  
8 with Mr. Doonan that the subject of nominees with reference  
9 to Mr. Stoller and to Mr. Allen was brought up. What  
10 specific meeting that was, I cannot be sure.

11 Q I see.

12 Well, sir, you remember I asked you this morning  
13 about Dominick & Dominick, do you recall that?

14 A Yes, sir.

15 Q Didn't you tell Mr. Doonan on the 19th of September  
16 1973 that Allen and Stoller bought blocks of the stock  
17 probably through Dominick & Dominick?

18 A Yes, sir.

19 Q Was that right?

20 A If that is the date then that is it.

21 Q Did you tell him that?

22 A Mr. Gould, I don't have the opportunity of having  
23 that piece of paper in front of me for those dates.

24 Q You didn't have any pieces of paper in front of  
25 you this morning when in response to Mr. Sorkin's question  
you told us what each one said to the other on certain

1 jgrf 2 Feeney-cross

2 dates at certain places, did you?

3 A I didn't say certain dates and certain places.  
4 I made reference to a period of time and I will  
5 say the same thing about these conversations. If you  
6 want to pin me down to the September 19th date, it is  
7 impossible for me to say yes it was September 19th.

8 Q I only want to know --

9 A The frame of time --

10 Q Forget the times. I am not asking you about any  
11 frame of time.

12 A You keep quoting it as being September 19th.

13 Q I am not doing that unfairly to you, sir. The  
14 piece of paper I have in my hand has Mr. Doonan's handwriting  
15 on it with the date September 19th, and I think the  
16 Government will concede that it was at or about that time  
17 that you had the meeting with him.

18 MR. SORKIN: We will concede that, your Honor.

19 Q So forget the time now. We fixed the time. Now  
20 what I want to know, sir, is not the time but what you  
21 said. Didn't you say to him, "Allen and Stoller bought  
22 blocks of stock probably through Dominick & Dominick"?

23 A Yes.

24 Q You didn't tell us that this morning, did you?

25 A No.

1 jarf 3 Feeney-cross

2 Q You never mentioned the recollection you had  
3 in '73 that Stoller and Allen had bought blocks of the  
4 stock through Dominick & Dominick.

5 A I think again the interpretation of one individual  
6 to the other -- when we spoke at that time and as I spoke  
7 this morning and if you remember my conversation this  
8 morning the reference to Dominick & Dominick was in using the  
9 example of ABC of somebody purchasing or through the  
10 efforts of Mr. Stoller and Mr. Allen purchasing stock from  
11 A to B to C and the reference of Dominick & Dominick  
12 again was brought up as a possible brokerage house that it  
13 was done through.

14 Q You mean you were guessing?

15 A I was not guessing. The name Dominick & Dominick  
16 has been thrown out to me a number of times in the presence  
17 of Mr. Stoller and Mr. Allen.

18 Q By whom?

19 A By Mr. Stoller and Mr. Allen.

20 Q A number of times?

21 A A number of times.

22 Q As a medium through which they sold Training With  
23 The Pros stock?

24 A No, as a brokerage house that they had a relation-  
25 ship with.

1 jqr4 4 Feeney-cross

2 Q At any rate, you really have no basis for saying  
3 that they bought stock through Dominick & Dominick. We  
4 are clear on that?

5 A Through Dominick & Dominick, no, I have no basis  
6 other than a conversation we had had at Mr. Stoller's and  
7 Mr. Allen's apartment.

8 Q I don't want to belabor the point. As far  
9 as you are concerned when you mentioned that to Mr.  
10 Doonan on the 19th it was a guess on your part?

11 A I believe I even couched words in that reference,  
12 that it was an assumption on my part of Dominick & Dominick.  
13 I don't see any reference to it there but I believe that is  
14 what I did.

15 Q You said 60 or 70,000 shares. You agree with me  
16 that actually they offered 42,000 shares, won't you?

17 A Yes.

18 Q So your memory was faulty on that. I am referring  
19 to Government's Exhibit 1.

20 MR. SORKIN: I object to, "his memory is faulty."  
21 He said he never knew how much it was.

22 MR. GOULD: He said he read the offering circular.

23 THE COURT: In any event, what difference does  
24 it make?

25 Q If you said 60 or 70,000 shares, you know now

1 jgrf 5 Feeney-cross

2 that that was inaccurate?

3 A It was not inaccurate, Mr. Gould. There were  
4 shares, what they call private investment shares, that  
5 were involved. When I was having a conversation with Mr.  
6 Doonan, what was happening was he was adding them all up.  
7 We talked about one conversation which now brought in  
8 investment stock, as well as the public stock and that  
9 is what happened and why this confusion on the number.

10 Q By September 1973 you were sophisticated in the  
11 ways of securities and finance, were you not?

12 A That is correct.

13 Q You know there is a difference between investment  
14 stock and public stock?

15 A That is right.

16 Q And you know that the only public stock is the  
17 stock that is sold either through a prospectus or an  
18 offering circular?

19 A That is correct.

20 Q And if you said here 60 or 70,000 shares public,  
21 you were telling us now that you were including in that  
22 the investment stock?

23 A No, sir.

24 MR. SORKIN: I object. These are Mr. Doonan's  
25 notes. He can't be responsible for what Mr. Doonan wrote

1 jgrf 6

Feeney-cross

2 down. It is his recollection that is binding.

3 THE COURT: I would agree.

4 MR. GOULD: I would too. I want to know if that  
5 is what he told Doonan and he said he did.

6 THE COURT: All right.

7 MR. GOULD: I don't think we ought to argue.

8 Q You did tell Doonan 60 or 70,000 shares. Didn't  
9 you tell us that a little while ago?

10 A Yes.

11 Q You did tell him 60 or 70,000 shares public?

12 A If that is what he has in his notes -- I don't  
13 remember saying that to him.

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Q During this period of September and October 1973, Mr. Feeney, while you were having some conversations with Mr. Doonan, you were still talking with people like Allen and D'Onofrio, is that right?

A I was still talking with Mr. Allen. I was not talking with Mr. D'Onofrio.

Q Did you have a falling out with D'Onofrio?

A Yes, sir.

Q And you were reporting to Mr. Doonan what Mr. Allen was telling you; were you not?

A Yes.

Q If Allen called you, you would make a note of it and then you would report the substance to Doonan?

A I would not report every single conversation that Mr. Allen made to me, only if it was in reference to something that Mr. Doonan and I had discussed.

Q If it was in reference to Training With The Pros, you did report it to Mr. Doonan?

A Yes, sir.

Q And then there came a time, did there not, when Mr. Allen telephoned you from Switzerland, and that was toward the end of October 1973. Do you remember that?

A Yes.

Q Do you remember the conversation that you had with

2 Allen?

3 A I don't recall it. No. Mr. Allen called me from  
4 Switzerland.

5 MR. SORKIN: I object, your Honor, as to hearsay  
6 now.

7 THE COURT: Mr. Allen called from Switzerland.  
8 Next question.

9 Q Do you remember the substance of the conversation  
10 that you had with him?

11 A You have to tell me which conversation,  
12 Mr. Gould.

13 Q Well, sir, did there come a time when you reported  
14 to Mr. Doonan that you had just completed a telephone  
15 conversation with Jerome Allen long distance from Switzerland  
16 in which you told Doonan that Allen did most of the talking  
17 and stated that he had mailed letters to various people,  
18 including certain prosecutors and judges, enumerating  
19 various acts of harassment by various law enforcement  
20 officials?

21 A Yes, sir.

22 Q Do you remember what he told you and what you  
23 told Doonan about that?

24 A Basically what you just said.

25 Q Do you remember the names of the people that Allen



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Feeney-cross

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spoke about?

THE COURT: May I inquire just what is the relevance?

MR. GOULD: May I inform your Honor at the side bar what I'm trying to do?

THE COURT: I wish so. We are going on.

(At the side bar.)

MR. GOULD: I am --

THE COURT: We didn't get into Allen's phone calls on direct.

MR. GOULD: No, we didn't. The only reason I'm doing it, here is a fellow who testified with circumstantial precision about conversations in the early part of 1969 and here is an extremely important subject, he can't remember what he said. My effort is to show that the story he is telling today about these meetings is --

THE COURT: No doubt about that. What I'm questioning is, why did we get into the conversations that Allen has had when he is trying to make some sort of deal for himself which may go down squarely to the detriment of either or both of the defendants?

MR. GOULD: It would not. I'm careful, I'm being very careful about that. The next sentence, I will tell you. What he did was, he came to Doonan -- this

is Doonan's notes. He says that Allen called him and Allen told him he mailed letters to various people.

THE COURT: Yes, I got that.

MR. GOULD: Specifically Ike Sorkin, so that the matters would be brought to their attention.

THE COURT: You lose me. If you please this is heady wine, I'm thrown off.

MR. GOULD: It gives me, Judge, the chance to show that a man who can remember what who said to who in 1969 can't even remember what he told them in 1973, less than a year ago. That is all. I will drop it.

MR. SORKIN: Your Honor, can't that be handled, your Honor, by him asking Mr. Feeney, and he has done it for the past hour, do you remember what you told Mr. Doonan? He said he doesn't remember the conversations.

MR. GOULD: Do you want me to handle it that way? I will do it.

THE COURT: Let's do it.

MR. GOULD: All right.

(In open court.)

Q Mr. Feeney, I'm going to withdraw the last question. I'm going to ask you one question on the subject. The truth of the matter is you don't remember what you told Mr. Doonan in the conversation on October 27, 1973; isn't that right?

A No, that is not true.

2 Q What did you tell him?

3 A You are specifically stating a date of a  
4 telephone call and I'm saying to you that I cannot recall  
5 any specific date that Jerry Allen called me. He called  
6 me a number of times. If you want me to capsulize and give  
7 you every conversation Jerry Allen ever had with me, I will  
8 do it for you.

9 THE COURT: Mr. Feeney, apparently what he is asking  
10 you, so we can get to the heart of this, and you correct me,  
11 Mr. Gould, if I'm wrong in understanding you, he is asking  
12 you what subjects did you discuss with this man Doonan in  
13 the prosecutor's office sometime last fall. I guess he means  
14 in September or thereabouts.

15 MR. GOULD: This one is October --

16 THE COURT: Let's take October, late October;  
17 not the dates of the Allen phone calls as such unless  
18 you recall stating dates. What do you remember telling  
19 Doonan? That is what you are seeking, is it not?

20 MR. GOULD: Yes, indeed.

21 THE WITNESS: Mr. Gould had started off --

22 THE COURT: Forget what Mr. Gould started out.  
23 That is why I intervened?

24 THE WITNESS: With reference to those letters,  
25 and so forth. Jerry Allen told me that he had sent some

2 letters --

3 THE COURT: This is what you were telling Doonan.

4 THE WITNESS: Yes, sir.

5 THE COURT: Just tell us what did you tell  
6 Doonan? You told Doonan about some letters that Allen  
7 sent, right?

8 THE WITNESS: Yes.

9 THE COURT: What else?

10 THE WITNESS: This is where the difficulty is,  
11 your Honor. I don't know which telephone conversation is  
12 which.13 THE COURT: No. I'm only asking you, because I  
14 think this is what counsel means and I'm trying to move things  
15 along here. Just if you can tell us what subject matter,  
16 not which phone call. Forgetting that for the moment, please.  
17 The subject matter is the letters that were written to  
18 various people here.

19 THE COURT: You told Doonan that?

20 THE WITNESS: Yes.

21 THE COURT: All right.

22 What else?

23 THE WITNESS: Talked to Mr. Doonan about the  
24 conversation I had had with Mr. Allen about his staying  
25 over in Switzerland, that he was not coming back.

1 gwrf 7

Feehey-cross

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2 THE COURT: This is a particular phone conversa-  
3 tion?

4 THE WITNESS: Yes.

5 THE COURT: All right.

6 THE WITNESS: This would be one of the phone  
7 conversations.

8 THE COURT: All right.

9 What else?

10 THE WITNESS: Talked to Mr. Allen about business,  
11 he was working on a project in Europe, about his  
12 relationship with Freddie Herbert, how he was making out  
13 with his paper over there.

14 THE COURT: You told all this to Investigator  
15 Noonan?

16 THE WITNESS: Yes.

17 THE COURT: All right.

18 Anything else that you can recall now?

19 THE WITNESS: I don't recall anything else.

20 THE COURT: All right.

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2 Q In these conversations that you had with Mr. Allen  
3 that you reported to Mr. Doonan, did Mr. Allen tell you that  
4 he was being paid to send those letters?

5 A No.

6 Q Never mentioned anything like that, right?

7 A Not to me.

8 Q Did he suggest to you in any way that he was doing  
9 it at the instance of or request of anybody?

10 MR. SORKIN: Is this a conversation with Mr.  
11 Allen or --

12 MR. GOULD: Yes, Mr. Allen on the basis of your  
13 bill of particulars, my friend.

14 MR. SORKIN: I understand that. It seems to me  
15 we are back to the hearsay problem. If he is going to testify  
16 as to what he told Mr. Doonan, I have no objection, your  
17 Honor. We are getting back to the same objection.

18 MR. GOULD: The next question would be did you  
19 tell that to Mr. Doonan, obviously.

20 THE COURT: Gentlemen, look. We go on and on.  
21 Let's go back to where I thought we had agreed we would  
22 be when we had the side bar conversation.

23 MR. GOULD: We are finished.

24 THE COURT: There is a hearsay problem, par-  
25 ticularly in the given circumstances which you and I and

1 gab-2

Feeney-cross

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2 Mr. Sorkin are aware of.

3 MR. GOULD: I will withdraw the question. We  
4 will deal with it in another way.

5 Q Now, sir, we are clear you were talking to these  
6 people in the Government all during the period September,  
7 October, November 1973, and you finally went before the  
8 grand jury on November 19.

9 You remember, sir, you told us this morning  
10 about a meeting that you attended in December 1971 at the --  
11 two meetings, breakfast meeting and a dinner meeting with  
12 Mr. Stoller at the Eden au Lac Hotel.

13 Do you remember that?

14 A Yes, sir.

15 Q Now, sir, did you say anything in your grand  
16 jury testimony about such a meeting?

17 A I don't remember.

18 MR. GOULD: Will you concede, Mr. Sorkin, that  
19 there is no reference to it or do you want me to go through  
20 it?

21 MR. SORKIN: We will concede that he was not  
22 asked any questions and didn't testify about it.

23 Q And I suggest you never mentioned that meeting  
24 at the Eden au Lac until what date?

25 You have no recollection?

1 gab-3

Feeney-cross

2 A I was never asked that question in the grand jury.

3 Q In the grand jury. Now, sir, I would like to  
4 know when for the first time did you tell anybody connected  
5 with the Government about the meeting at the Eden au Lac  
6 Hotel?'

7 A I don't recall.

8 Q Was it in the last five or six weeks?

9 A No, it was much before then.

10 Q Before then?

11 A Yes.

12 Q Was it a year ago?

13 A The conversation as best I can remember, and again  
14 I have to use the word, the substance of my conversation --  
15 they were numerous. They would all hinge upon the same sub-  
16 ject. I thought I had covered everything each time I had  
17 gone down there. I don't remember specifically any one  
18 meeting where the term or the place Eden au Lac Hotel comes  
19 into it. I would assume from my conversation I had with  
20 Mr. Doonan it was from the beginning. If there is something  
21 to the contrary, I am not aware of it. I thought from the  
22 beginning we covered most of the area.23 Q It is agreed, you didn't tell it to the grand  
24 jury.

25 A That is correct.



1 gab-4

Feeney-cross

2 MR. GOULD: Mr. Sorkin agrees.

3 MR. SORKIN: I do so. I agree.

4 Q You testified, did you not, about a meeting in  
5 early spring or late winter in answer to one of his Honor's  
6 questions, and you fixed it as March 1972 at Mr. Allen's  
7 apartment, at which Mr. Bonavia was present. Do you remember  
8 that?

9 A Yes, sir.

10 Q Who was present at that meeting?

11 A As I said before, Mr. Allen, Mr. Stoller, Mr.  
12 Bonavia, I believe it was Mr. Allen's son Greg was walking  
13 in and out of the room.

14 Q That is all, and you, right?

15 A I d-n't say that is all. There is a possibility  
16 there would be somebody else. I don't remember anybody else.

17 Q But you do remember who said what to whom, don't  
18 you?

19 A I remember the substance of the conversation, yes.

20 Q You have told us to the best of your recollection  
21 who was present, right?

22 A Yes.

23 Q You have told us Mr. Allen, Mr. Stoller, Mr.  
24 Bonavia, yourself and Mr. Allen's son whom you say, Greg,  
25 who is --

1 gab-5

Feeney-cross

2 A I remember somebody else being there, coming in and  
3 out.

4 MR. SORKIN: Excuse me.

5 (Pause.)

6 A I remember somebody else being there --

7 Q What was his name?

8 A I believe it was Greg. I could be wrong.

9 Q Didn't you tell us this morning there was an  
10 elderly gentleman named Joe there?

11 A I said Joe Bonavia. Which meeting are you talking  
12 about?

13 Q At this meeting at the apartment.

14 A I thought you were talking of the meeting at Mr.  
15 Allen's apartment.

16 Q That's what I just described to you.

17 A Are you talking about the meeting -- you are talking  
18 about either January or February?

19 Q Let's start over. I am sorry, maybe I have confused  
20 you and I may be confused.

21 I think you are right and I am wrong. I think  
22 my memory was wrong.

23 Let's get back so I get straightened out and I  
24 apologize. I am talking about a meeting in Allen's apartment,

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gab-6

Feeney-cross

and you have got there Mr. Bonavia and these other fellows.

Now, sir, with respect to that meeting at which Mr. Bonavia was present, that was the only meeting that I can recall your telling about where Bonavia was present, right?

A That is the only one I have been asked about this morning, yes.

Q It is the only one that you ever attended with Bonavia, wasn't it, and Stoller and Allen?

A And Stoller and Allen, yes.

Q That is the only one. Did you tell anything about that meeting to the grand jury?

A I don't recall.

MR. GOULD: Will counsel concede there is no reference to a meeting with Bonavia?

MR. SORKIN: We will not only concede there was no reference, we will also concede he was not asked about any meeting.

Q When did you tell the Government for the first time about the meeting in which Mr. Bonavia was present?

A As I stated before, Mr. Gould, on one of the occasions that I met with Mr. Doonan or Mr. Sorkin the subject came up. I don't remember specifically which meeting.

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Q But you weren't asked and you didn't tell anything

3

about it in the grand jury?

4

A I was not asked that question in the grand jury.

5

Q You told us this morning about another meeting

6

in the fall of 1973. That was just last year in October or

7

November, right?

8

A Yes.

9

Q At that time when you had that meeting, that was

10

in Switzerland, wasn't it?

11

A Yes.

12

Q By the time you had that meeting in the fall of

13

1973, you were already engaged in your program of cooperation

14

with the Government, were you not?

15

A Yes, sir.

16

Q You had already been talking to them for months?

17

A Yes, sir.

18

Q And you knew when you went to Switzerland that

19

you were going to report whatever information you could

20

get to Mr. Doonan?

21

A If it was relevant to something that Mr. Doonan

22

wanted, yes.

23

Q Anything that Stoller told you or Allen told you

24

you were going to report, weren't you?

25

A I don't remember if specifically at that time

qb-2

Feeney-cross

there was the investigation of Training With the Pros as it was later on. I don't remember just exactly what the atmosphere was.

Q Let's agree on a few things because I really want to move this along.

At that time you were cooperating with the Government, correct?

A Yes, sir.

Q When you went to Switzerland they knew you went to Switzerland, the Government fellows, right?

A Yes.

Q In fact, they gave you permission to go, correct?

A That is correct.

Q And you made arrangements to see Mr. Stoller, didn't you?

A Yes.

Q Did that just happen, that you saw Stoller?

A Yes, I didn't know Mr. Stoller was there. Mr. Allen asked me to come over to Switzerland.

Q And you knew that you were going to report whatever Mr. Stoller told you back to Mr. Doonan, didn't you?

A As I said before, I didn't know Mr. Stoller was going to be there.

Q Once you saw Stoller there you knew that whatever

1 he told you you were going to relate to the Government?

2 A Yes, because the conversation we had was relative  
3 to something --

4 Q That is right, it was a relevant conversation.  
5 It was on the subject that you were working on at the time  
6 with Mr. Doonan, correct?

7 A Yes.

8 Q Did you make any notes of the conversation?

9 A No.

10 Q And you came back to the United States and told  
11 Mr. Doonan about it, right?

12 A Yes.

13 Q From memory, not from notes?

14 A From memory.

15 Q That was the conversation in which you heard some  
16 talk about a swimming pool?

17 A Yes, sir.

18 Q When you went to the grand jury, just a few days,  
19 a week or two after you got back, do you remember that?

20 A Yes, sir.

21 Q Did you mention that conversation to the grand  
22 jury?

23 A I don't recall.

24 MR. GOULD: Will the Government concede there is  
25

1 no reference to it?

2  
3 MR. SORKIN: We will concede he was never asked  
4 and never answered.

5 Q By the way, when you went to the grand jury were  
6 you told not to volunteer?

7 A The word "volunteer" I don't think was used. I  
8 was told to answer the questions put to me.

9 Q Just answer the questions, is that it?

10 A Yes, sir.

11 Q You said that a few weeks later after you got back  
12 from Switzerland, you again met with Stoller in the United  
13 States, correct?

14 A Yes.

15 Q And Stoller told you in that conversation about the  
16 fact that he was concerned about Jerry?

17 A Yes, sir.

18 Q What was he concerned about?

19 A He was concerned because Jerry was in bad financial  
20 straits, that Jerry had some problems at home, that the  
21 pressures would be good great on him and that with the im-  
22 pending indictments that he had, that he would collapse and  
23 wind up turning State's evidence or giving evidence about  
24 his knowledge of Switzerland.

25 Q And you reported that conversation to Mr. Doonan,

1 qb-5

Feeney-cross

2 did you not?

3 A Yes.

4 Q And then you went to the grand jury and you didn't  
5 mention it. You were not asked and you didn't tell about  
6 it, correct?

7 A Yes, sir.

8 Q When you made your agreement with the Government,  
9 November 11, 1973, you were on bail, weren't you? That is,  
10 in one or more cases.

11 A I believe I was on bail, yes, sir.

12 Q And you had bail limits, did you not?

13 A My limits, as I recall them, were anywhere in  
14 the United States, Canada, Mexico and Europe.

15 Q Anywhere in those countries?

16 A Giving notification to my attorney, yes.

17 Q Did you get any permission from the Government  
18 to go to Europe when you happened to meet Mr. Stoller on a  
19 plane?

20 A The requirement was that I had to report to my  
21 attorney that I was leaving the country and I did so.

22 End 4A  
23  
24  
25



1 4b pm jqrfl Feeney-cross

2 Q And it was a pure accident that you ran into Mr.  
3 Stoller on the plane?

4 A You are mixing up the conversations, Mr. Gould.

5 Q Am I?

6 A Yes, sir.

7 Q When you did meet Mr. Stoller on the plane when  
8 was that?

9 A If you are talking about 1971, December, I was  
10 under indictment for the Evan's Dairy case. On that parti-  
11 cular case, I did have to have permission from the  
12 Government and I did seek it and I got it.

13 Q You sought it, you got it and, am I right, it was  
14 just chance that you ran into Stoller?

15 A No, it was not chance.

16 Q Did you arrange to go with Stoller?

17 A Mr. Allen had made the arrangements for me to  
18 meet with Stoller.

19 Q When you were testifying this morning you were  
20 asked about a conversation or an event in the fall of 1973.  
21 You said you wanted to check some records, do you remember  
22 that?

23 A I think when I used the word record, I don't  
24 want to over-imply what I meant by that.

25 Q You don't want to what?

1 jqrfr 2

Feeney-cross

2 A Over-imply that I have a record of some type.

3 Q What did you want to check?

4 A I thought possibly I would have one of these  
5 old booklets and I would keep a record of my notations  
6 of where I was going and who I was meeting with, a business-  
7 man's notation book like an Executiform.

8 Q Do you have it?

9 A No.

10 Q When you testified this morning you thought you  
11 might have it, correct?

12 A What I was trying to bring out was that there  
13 was a possibility but when I sat and thought about it  
14 during lunchtime I don't think I have any such record.

15 Q You mean from the time you started to talk with  
16 Mr. Doonan and until you made that remark this morning  
17 nobody asked you if you had such a record?

18 A I have, I believe, turned over all records that  
19 I have of whatever I kept to the Government.

20 Q Did you have such a book as you have just  
21 described?

22 A I am sure at this moment I don't. I think what  
23 it was --

24 Q You misunderstand me. I will start over, I am  
25 sorry.

1 Did you, past tense, did you have such a book  
2 as you have just described?  
3

4 A In my past dealings as a businessman I would keep  
5 certain records or notations. I don't believe I had  
6 one in this reference. The reason I said it was that I was  
7 trying to recall if I did have it and I know or I am sure I  
8 don't have it. That is all I was making reference to.  
9 I don't want to imply there was something there --

10 Q There must be a defect in my mind. Is the  
11 answer yes? You did have it or, no, you didn't have it?

12 A No, I did not have it.

13 Q The answer is no, you never had such a book, is  
14 that right?

15 A I never had a book that would have a reference  
16 of that, no.

17 Q So when you told me a little while ago that you  
18 wanted to check the record, you wanted to check it in a  
19 book that you never had, is that right?

20 A No.

21 MR. GOULD: I have no more questions.

22 THE COURT: We will take the afternoon recess  
23 at this point, ladies and gentlemen, about ten minutes.

24 (Jury left courtroom.)

25 (Recess.)

(In open court, jury present.)

MR. GOULD: If your Honor please, as I finished a few moments ago the Government with characteristic and commendable efficiency, produced the affidavit that we referred to this morning so may I have your permission to ask the witness about it so we don't have to bring him back?

THE COURT: Indeed.

MR. SORKIN: We will concede this was the one filed by Mr. Feeney.

CROSS EXAMINATION

BY MR. GOULD (Continued):

Q Do you remember this morning I showed you this paper marked Stoller Exhibit P for identification?

A Yes.

Q And you remember that this morning you couldn't remember whether you had ever signed a paper like that?

A That is correct.

Q Or whether you had ever seen this paper before, do you recall that?

A That is right.

Q I now show you a paper which I will ask to have marked as Stoller P-1 for identification.

(Defendant Stoller Exhibit P-1 marked for identification.)

MR. GOULD: With Mr. Sorkin's permission I inform you that this has come from the files and archives of the Securities and Exchange Commission.

MR. SORKIN: We concede that.

Q Will you please look at P-1, look at the front for a minute, and tell us, have you ever seen that paper before?

A I still don't know.

Q You still don't know?

A No.

2 BY MR.GOULD:

3 O Let's see if we can help you.

4 Will you now look at the signature which appears  
5 onit. I ask you, is that your signature which appears on  
6 it?

7 A Yes, it is.

8 Q I ask you now, sir, whether it was signed by you  
9 and sworn to before a notary public named Raymon N. D'Onofrio?

10 A Yes.

11 Q And it was signed and sworn to by you on August  
12 20, 1970, right?

13 A Yes.

14 Q And it was signed and sworn to by you for use in  
15 a court proceeding in this building, the Southern District  
16 of New York; is that right?

17 A Yes.

18 Q As I tell you about it, does it come back to you  
19 that you signed such a paper?

20 A I still don't remember signing it. I'm sorry.

21 Q You still don't recall, but you admit you signed  
22 it?

23 A Yes, that is my signature.

24 O Very well, sir.

25 Do you remember making it?

2 A No, I don't.

3 Q You remember nothing whatever about it?

4 A I remember the substance of the case you are  
5 talking about. As I said to you before, there is so many  
6 documents in that particular case, this one instrument, I  
7 just can't remember. It doesn't mean it wasn't there.

8 Q Do you remember some of the other instruments in  
9 the case?

10 A I remember them as being voluminous. I don't  
11 remember any one specific document, no.

12 Q You remember what the case was about, don't you?

13 A Yes, I do.

14 Q Just tell us, there was a charge by the Securities  
15 and Exchange Commission that you had engaged in illegal  
16 conduct, you and others; isn't that right?

17 A I don't remember how the charge was. I'm sorry.

18 Q Didn't you know about the facts in the case?

19 A I knew very little about the facts in the case.  
20 I'm sorry.

21 Q All right.

22 I want to know now whether this was a truthful  
23 affidavit or whether it contains false statements. Just  
24 yes or no, to the best of your knowledge and recollection,  
25 is this a truthful affidavit or a false affidavit?

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25 A That is correct.



2 Q That is a true statement?

3 A That is a true statement.

4 Q You had nothing whatever to do with him?

5 A I did not.

6 Q You had meetings with him, didn't you?

7 A Mr. D'Onofrio and I as business associates had  
8 parted our ways. We had a disagreement. The only reason  
9 I was meeting with Mr. D'Onofrio at that point was for the  
10 purpose of helping him to sell his shares of ESP to a fund  
11 and then toward the end of December we had agreed --  
12 I went on a vacation to California, and my relationship  
13 with Mr. D'Onofrio started to come back to what it had been  
14 prior to that.

15 Q In October, November and December 1968 both you  
16 and Mr. D'Onofrio were connected with a company called ESP  
17 were you not?

18 A Mr. D'Onofrio was no longer officially connected  
19 other than the fact that he had stock in the company and  
20 I along with Mr. Thomas Souran and some people at the  
21 Valueline Corporation making an effort to try and dispose of  
22 Mr. D'Onofrio's stock, which is what we did do.

23 Q You had meetings, did you not, in October and  
24 November and, indeed, in December with D'Onofrio about ESP?

25 A The meetings about ESP, no. We had meetings about

2 Mr. D'Onofrio's stock in ESP, which is a big difference.

3 Q You had a number of such meetings, right?

4 A We had two or three that I recall.

5 Q And that was a business relationship, wasn't it,  
6 that you had?

7 A I had no relationship with Mr. D'Onofrio at  
8 that time. As I said before, if it became necessary for  
9 the proper function of the company that the shares that  
10 D'Onofrio had be disposed of or sold to somebody else  
11 because it was becoming -- we were going to have difficulty  
12 in the operation of the company since Mr. D'Onofrio  
13 had such a large block of stock. It became necessary  
14 we get rid of his shares to place them with somebody who  
15 would be more friendly to the management of the company.

16 Q Then what you meant was, while you were having  
17 talks with D'Onofrio about business, you did not have any  
18 business relations with him?

19 A I did not have business relationship with him.

20 Q You were meeting with him?

21 A I was meeting with him and others.

22 Q About business?

23 A About ESP stock.

24 Q That was business, wasn't it? That was your  
25 business?

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Feeney-cross

1386

A Yes.

Q So we have it that you were having business meetings with him about ESP stock in October, November or December, but when you swore you had no business relations with him, that was because you didn't think that that constituted a business relation; is that right?

A That's right, because the relationship -- Mr. D'Onofrio was using an attorney at the time and most of the discussions would be centered through the attorney. Mr. D'Onofrio would only verify or concur with what we had agreed on as far as the disposal of the stock.

Tk 5B

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gab-1

Feeney-cross

2

Q You had many discussions, conversations with him

3

during those months?

4

A I think I stated to you before we had two or

5

three conversations.

6

Q How about telephone conversations?

7

A I don't think I talked to him on the telephone,

8

maybe once or twice.

9

Q You didn't think those were business relations?

10

A They were not relations -- there is a question.

11

I believe you have to now go back to the answer to that affi-

12

davit and you have to read into the business relations in

13

respect of what I am answering. In other words, you are

14

taking it out of context.

15

Q You say it is an honest affidavit? You didn't

16

think those were business relations, right?

17

A No, I did not.

18

Q Now, sir, there was a time when both you and

19

D'Onofrio were officers of a company called D'Onofrio & Feeney.

20

A.G.

21

A Yes.

22

Q Is that correct?

23

A I was never an officer of D'Onofrio-Feeney A.G.

24

I was a stockholder of D'Onofrio-Feeney A.G.

25

Q Never an officer?

1 gab-2

Feeney-cross

2 A No.

3 Q Did D'Onofrio & Feeney A.G. ever act as a regularly  
4 authorized agent in the United States for a Swiss bank?

5 A I don't know if you can use the word regularly  
6 authorized agent. I believe on occasion that they acted on  
7 behalf of the Bank Hofmann.

8 Q D'Onofrio-Feeney A.G. did act as an authorized  
9 agent in the United States for Bank Hofmann, did they not?

10 A I don't remember, Mr. Gould. I recall specifically  
11 one instance that I remember D'Onofrio-Feeney A.G. repre-  
12 senting Bank Hofmann.

13 Q In the United States?

14 A In the United States.

15 Q That's right. With authority?

16 A With authority as to that one instance, yes.

17 Q You said in this affidavit, didn't you, Mr. Witness,  
18 that D'Onofrio and Feeney A.G. never acted as a regularly  
19 authorized agent in this country for a Swiss bank.

20 A The --

21 Q Just yes or no. Is that what you said in there?

22 A As of that date, yes.

23 Q As of that date. You mean if you did act for them  
24 it was after this date?

25 A It was after this date.

1 gab-3

Feeney-cross

2 Q You mean in 1970, August 1970, you had not yet  
3 acted for them?

4 A Mr. Gould, I am not talking about '70. I am  
5 talking about the time the affidavit was made to the Securities  
6 and Exchange Commission.

7 Q The date of the affidavit, Mr. Feeney, is what?

8 A I am talking about --

9 Q No, you answer my questions.

10 A I am talking about the affidavit of the Securities  
11 and Exchange Commission.

12 MR. SORKIN: Your Honor, I object.

13 Q That is what you were talking about here, as of  
14 the date of the affidavit?

15 A I am talking about the date of the affidavit of  
16 the Securities and Exchange Commission.

17 Q Well --

18 MR. SORKIN: Your Honor, I object.

19 MR. GOULD: To what?

20 MR. SORKIN: I think the witness is confused.  
21 He is referring to the SEC affidavit, you are talking about  
22 the --

23 THE WITNESS: I am talking about the SEC affidavit.

24 Q I am not.

25 A Okay.

1 gab-4

Feeney-cross

2 Q I am talking about your affidavit. Your affidavit  
3 is dated what?

4 A August 1970.

5 Q And sworn to before Raymon D'Onofrio, notary  
6 public, on that date, right?

7 A Yes.

8 Q Was it discussed with Raymon D'Onofrio, notary  
9 public, before it was signed?

10 A Yes.

11 Q Did he know what was going into it?

12 A Yes.

13 Q Did he agree with what was going into it?

14 A I believe so, yes.

15 Q Now, sir, in this affidavit that you signed you are  
16 concerned, are you not, with refuting certain misstatements  
17 attributed to you and others by an officer of the Securities  
18 and Exchange Commission. That is what the affidavit is  
19 about, isn't it?

20 A Yes.

21 Q All right. And you say among other misstatements  
22 in Mr. Sorkin's July 15, 1969 affidavit are these, and I am  
23 going to skip this because we are not too interested in it.

24 "I am not an officer of D'Onofrio & Feeney, A.G.  
25 Both D'Onofrio and I are minority shareholders. D'Onofrio

1 gab-5 Feeney-cross  
2 & Feeney A.G. has never acted as a regularly authorized  
3 agent in this country for a Swiss bank."

4 On August 31, 1970, was that a true statement?

5 A Yes.

6 Q On that date they had never acted as an agent?

7 A As a regular agent for the bank.

8 Q I see. They had acted as an agent, hadn't they?

9 A It says regular, Mr. Gould, That is what -- my  
10 response, as a regular authorized agent, which we were  
11 not.

12 Q You were an agent, correct?

13 A We had a specific instance where the bank let us  
14 represent them for one transaction.

15 Q As an agent?

16 A It wasn't even as an agent. It was as a brokerage  
17 commission. If you want to use the word agency, you can.

18 Q I don't want to use it --

19 A I don't have the agency or the brokerage agreement  
20 with me and I can't make reference to it. So I can't say --

21 Q Were you authorized?

22 A Authorized by the bank.

23 Q So everything here comes down to whether you were  
24 regularly authorized, is that right?

25 A That's correct.



1 gab-6

Feeney-cross

2 Q You say this was a true statement because you  
3 were only authorized once and not regularly, okay?

4 A That's correct.

5 Q Up above here they don't use the word regularly,  
6 do they?

7 A Where are you referring to?

8 Q Right in the same paragraph. Mr. Sorkin's  
9 affidavit says Feeney and D'Onofrio are officers of D'Onofrio  
10 & Feeney A.G. which has acted as an authorized agent in  
11 this country for a Swiss bank. The word "regularly" isn't  
12 in there.

13 A That is right.

End 5B

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Tk 6A

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qb-1

Feeney-cross

2

Q So when you answered it you put the word "regular-

3

ly" in, correct?

4

A I didn't put anything in.

5

Q Somebody put it in.

6

A I have an attorney. You have to ask him.

7

MR. SORKIN: I didn't hear you.

8

MR. GOULD: He said he had an attorney and I

9

would have to ask the attorney.

10

MR. SORKIN: Thank you.

11

MR. GOULD: I would like to offer Stoller Exhibits

12

P and Pl, not for the content or truth of the content of

13

anything that is in them, but solely in order to enable me

14

to refer to them on the issue of the witness' credibility.

15

THE COURT: Need we put both in?

16

MR. GOULD: Yes, your Honor. I think because

17

one is the one he saw this morning and one is the one he

18

saw this afternoon.

19

MR. SORKIN: I don't understand the offer.

20

MR. GOULD: I owe it to the Court.

21

THE COURT: For the moment I pursue what I asked

22

you. Why burden t he record with duplicates? Aren't

23

they duplicates?

24

MR. GOULD: Except one has a signature.

25

THE COURT: Then just offer Pl. That has a

1 qb-2

Feeney-cross

2 signature.

3 MR. GOULD: Yes, let's just offer that.

4 THE COURT: Do you object to P1?

5 MR. SORKIN: May I take a quick look at it, your  
6 Honor?

7 THE COURT: Surely.

8 MR. SORKIN: I object to the whole document. I  
9 have no objection for his selecting those portions he asked  
10 Mr. Feeney about. There is stuff that is irrelevant. It  
11 relitigates the whole Harwyn case.

12 MR. GOULD: I don't know how to offer just those  
13 parts of it. He would be faced with the dilemma of the jury,  
14 if they should show interest in it, asking to see it and  
15 we have to mask it out.

16 I think counsel will concede that while it  
17 contains a number of references to completely immaterial matters,  
18 the minds of the jury would not be perverted by seeing them.

19 MR. SORKIN: May I suggest this: Mr. Gould, just  
20 tell me what paragraphs or lines he wants to introduce and  
21 we can stipulate to it.

22 MR. GOULD: I want it all in. I want to make  
23 a demonstration. I don't argue there now in front of  
24 the jury. Here is an affidavit which a man didn't know  
25 anything about this morning, and now he sees it.

1 qb-3

Feeney-cross

2 THE COURT: May I see the document?

3 The entire document will be received for whatever  
4 it is worth solely on the issue of credibility.

5 MR GOULD: That is all I ask for. Thank you very  
6 much, your Honor.

7 I have no further questions.

8 THE COURT: Mr. Feldshuh?

9 MR. FELDSHUH: I have no questions, your Honor.

10 THE COURT: Before you make a final decision,  
11 I want to make sure I didn't mislead you in any of my  
12 rulings this morning.

13 As I understand it, the first part of Mr. Feeney's  
14 testimony on direct having to do with conversations with  
15 D'Onofrio, Stoller, Allen and so on in '68 and '69 were  
16 offered and received subject to connection as to both defend-  
17 ants under Count 1.

18 It was only beginning with the December 1971  
19 conversation and later conversations into '72 and '73 which  
20 Mr. Feeney told us he had with Mr. Stoller, perhaps Allen  
21 to an extent, but maybe Stoller and so on that were received  
22 only as to Mr. Stoller and not as against your client.

23 MR. FELDSHUH: That is right.

24 THE COURT: So long as you understand that.

25 MR. FELDSHUH: I understand the distinction,

1 qb-4

2 your Honor.

3 THE COURT: Very good.

4 Any redirect?

5 MR. SORKIN: No, your Honor.

6 THE COURT: You are excused, Mr. Feeney.

7 THE WITNESS: Am I through now?

8 THE COURT: As far as I can tell, you are, sir.

9 (Witness excused.)

10 THE COURT: In signing this writ, do you wish this  
11 adjourned or marked satisfied?

12 MR. SORKIN: Adjourned, your Honor.

13 THE COURT: Ot what day?

14 MR. SORKIN: May I approach the bench on that?

15 THE COURT: Just give me a date.

16 MR. SORKIN: Adjourned until next week, your Honor,  
17 a week from today.

18 THE COURT: All right.

19 MR. SORKIN: Thank you, your Honor.

20 Shall I call our next witness, your Honor?

21 THE COURT: Yes.

22 MR. SORKIN: The Government calls Thomas Doonan.

23

24

25

qb-5

Doonan-direct

1  
2 T H O M A S D O O N A N, called as a witness by the  
3 Government, having been first duly sworn, was examined  
4 and testified as follows:

5 MR. GOULD: If your Honor please, would it not  
6 be desirable in view of what we know of Mr. Doonan to have  
7 an offer of proof, some indication of where we are going  
8 so we don't find ourselves in troubled waters?

9 THE COURT: Yes, that is perfectly all right.  
10 More accurately, I think, unless either side disagrees, we  
11 can have a brief voir dire of the Government's evidence.

12 MR. GOULD: I wasn't all that ambitious, your  
13 Honor. Thank you very much.

14 THE COURT: I would suggest as much. Do you  
15 disagree, Mr. Sorkin?

16 MR. SORKIN: No, I don't, your Honor.

17 THE COURT: Rather than take your time, ladies and  
18 gentlemen of the jury, we will excuse you now until tomorrow  
19 morning at ten o'clock, the regular time. Incidentally,  
20 before I forget it, although you may have it very well  
21 in mind, there is another religious holiday this Thursday  
22 which I am fairly certain that many of the participants,  
23 lawyers, parties and perhaps one or two of you will wish  
24 to observe, Yom Kippur, which I believe is Thursday.

25 MR. SORKIN: That is correct, your Honor.

qb-6

Doonan-direct

1 THE COURT: We will be unable to sit that day and  
2 Friday as well because I have, as usual, other commitments  
3 that day. I just wanted to alert you that you will have  
4 Thursday and Friday to yourselves this week.  
5

6 See you tomorrow morning at 10:00.

7 (Jury left the courtroom.)

8 THE COURT: Rather than raise specific objections  
9 I will take this testimony on the theory that you object  
10 to each and everything asked and we will get everything  
11 out on the table. Let's not do it the usual cluttered-like  
12 American courtroom way in which everybody invokes every ob-  
13 jection known to man on every specific detail.

14 I am taking this subject to your objections and  
15 then I will rule on everything at the end.

16 MR. GOULD: A continuing objection, we keep still?

17 THE COURT: Precisely. Let us proceed.

18 Mr. Sorkin, with dispatch, please.

19 MR. FELDSHUH: May I see in one of the seats up  
20 there to make it easy for myself?

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. SORKIN:

24 Q Two background questions, by whom are you employed?

25 A I am presently employed by the U. S. Attorney's

1 qb-7

Doonan-direct

2 office in the Southern District of New York.

3 Q In what capacity?

4 A Criminal investigator.

5 Q How long have you been so employed?

6 A Since April of 1971.

7 Q Prior to that time?

8 A I was employed by the Internal Revenue Service  
9 as a special agent with the Intelligence Division and prior  
10 to that as a revenue agent with the Internal Revenue Service.

11 Q Mr. Doonan, when for the first time did you meet  
12 the defendant Philip Stoller?

13 A On September 11, 1973.

14 Q Where did you meet him?

15 A In your office, Mr. Sorkin.

16 Q Was there a conversation?

17 A Yes, sir.

18 Q What was said by Mr. Stoller, by me or you and what  
19 did Mr. Stoller say in return?

20 A Mr. Stoller was advised of his constitutional rights  
21 and then a series of background questions were asked of Mr.  
22 Stoller.

23 Q Did Mr. Stoller give you his telephone numbers?

24 A Yes, he gave me two telephone numbers for his  
25 residence in Woodmere, Long Island.



2 Q Do you recall the telephone numbers at this time?

3 A If you have my notes --

4 MR. GOULD: I concede he gave them the right tele-  
5 phone numbers and they were right.

6 Q When was the next time that you saw Mr. Stoller?

7 A September 17, 1973.

8 Q Where was that?

9 A In your office.

10 Q Was there a conversation?

11 A Yes, there was.

12 Q What did I or you say and what did Mr. Stoller say?

13 MR. GOULD: I am a little astonished by this. I  
14 didn't know they were going for admissions or anything like  
15 that.

16 THE COURT: I don't think so. I think what he  
17 is trying to do is establish familiarity with the voice of  
18 Mr. Stoller, isn't that so?

19 MR. GOULD: I will concede he has seen Stoller  
20 a number of times, he heard his voice.

21 MR. SORKIN: There is one other matter before  
22 we even get to the question of the tapes. I should point  
23 out there is substantive testimony the Government is going  
24 to introduce with respect to certain documents received from  
25 Mr. Stoller.

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Q Do you recall the telephone numbers at this time?

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A September 17, 1973.

Q Where was that?

A In your office.

Q Was there a conversation?

A Yes, there was.

Q What did I or you say and what did Mr. Stoller say?

MR. GOULD: I am a little astonished by this. I didn't know they were going for admissions or anything like that.

THE COURT: I don't think so. I think what he is trying to do is establish familiarity with the voice of Mr. Stoller, isn't that so?

MR. GOULD: I will concede he has seen Stoller a number of times, he heard his voice.

MR. SORKIN: There is one other matter before we even get to the question of the tapes. I should point out there is substantive testimony the Government is going to introduce with respect to certain documents received from Mr. Stoller.

2 THE COURT: I am only interested in the tapes.

3 MR. GOULD: I thought that is all we were doing.

4 MR. SORKIN: I will do that, your Honor.

5 Q Let me direct your attention, Mr. Doonan, to  
6 approximately February 19, 1974. Did you have a conversation  
7 with Mr. Allen?

8 A Yes, I did.

9 Q Did Mr. Allen give you anything?

10 A On February 21, Jerome Allen gave me a copy of the  
11 affidavit that he received from Martin Frank on February  
12 19, 1974.

13 Q Mr. Doonan, I am going to show you what has been  
14 previously marked as Government Exhibit 42 --

15 A Let me correct something. I said February 19, he  
16 received the affidavit. I am wrong, it was February 30 he  
17 received the affidavit.

18 Q Let me show you what has been marked, Mr. Doonan,  
19 as Government Exhibit 42A for identification. Will you  
20 look at this affidavit and I ask you, is that the original  
21 or an exact copy of the affidavit that Mr. Allen showed  
22 to you?

23 A Yes, it is.

24 Q My question was: Did Mr. Allen give you a copy,  
25 an exact copy of 42A?

2 A Yes.

3 Q Let me direct your attention, Mr. Doonan,  
4 to February 28, 1974, at approximately 5:15 in the afternoon.  
5 Could you tell us where you were?

6 A At 5:15 I had just gotten down to the department  
7 of investigations, New York City Department of Investigation,  
8 and Mr. Bogen was with me, you were with me, Mr. Jerome  
9 Allen was with me and we met with a gentleman down there  
10 by the name of Timothy O'Brien, who is an investigator with  
11 the Department of Investigations.

12 Q Prior to this meeting at 5:15, did you have a  
13 meeting with Mr. Allen in the office of the United States  
14 Attorney?

15 A Yes.

16 Q Where was this meeting?

17 A We had a meeting in Mr. Thomas Edwards' office,  
18 the chief of the Criminal Division.

19 Q Tell us, please, who was present.

20 A Mr. Edwards was there, Mr. Sorkin, myself, Mr.  
21 Bogen, Jerome Allen and Eric Bregman.

22 Q Was there a conversation?

23 A Yes, there was.

24 Q Was the subject of this affidavit discussed?

25 A Yes, it was.

2 MR. FELDSHUH: Objection.

3 THE COURT: Mr. Feldshuh, I told you you have  
4 a continuing objection to all of this.

5 MR. FELDSHUH: I just wanted a clarification,  
6 your Honor.

7 THE COURT: Peace.

8 MR. GOULD: It was a reflex.

9 Q Was this affidavit discussed?

10 A Yes, it was.

11 THE COURT: A Pavlovian reflex.

12 MR. GOULD: It was, your Honor, I am sure.

13 Q Did there come a time, Mr. Doonan, when Mr.  
14 Edwards asked Mr. Allen if he would voluntarily wear  
15 a recording device?

16 A Yes.

17 Q What happened then?

18 A Mr. Allen and Mr. Bregman left the room to dis-  
19 cuss the matter privately. They returned within a few  
20 minutes and both Mr. Bregman and Mr. Allen both stated that  
21 they would voluntarily be willing to record any conversations  
22 with Mr. Frank.

23 Q Between who?

24 A Between Mr. Allen and Mr. Frank.

25 Q Let's go back to the meeting with Mr. O'Brien.

2 What happened at the Department of Investiga-  
3 tions at about 5:15 in the afternoon?

4 A After we arrived we went into a room at the  
5 Department of Investigations that contains a pay telephone  
6 and a Sony tape recorder with a coil was hooked to the pay  
7 telephone. Mr. Allen was requested to call Mr. Frank.  
8 Mr. Allen called Mr. Frank.

9 Q Did you observe the telephone number that he  
10 was dialing?

11 A Yes, I did.

12 Q Is that the telephone number that you knew to  
13 be the telephone of Mr. Frank, his office number?

14 A Yes.

15 Q Then what happened?

16 A Mr. Allen dialed the phone, had a conversation,  
17 and we overheard the conversation. The conversation was  
18 recorded.

19 Q You say you overheard the conversation. Did you  
20 hear Mr. Allen or did you hear Mr. Frank and Mr. Allen?

21 A I only heard Mr. Allen's part of the conversation.

22 Q When Mr. Allen was talking was the conversation  
23 being recorded on the tape recorder?

24 A Yes, it was.

25 Q After Mr. Allen got off the phone what did you

2 do?

3 A The tape recording or the tape was rewound and  
4 played back and we all listened to the recording.

5 Q Have you heard Mr. Frank's voice on previous  
6 occasions?

7 A Yes.

8 Q Can you recognize his voice?

9 A Yes.

10 Q Did you identify the voices on that tape?

11 A Yes.

12 Q What voices did you identify?

13 A I identified Mr. Jerome Allen and Martin Frank.

14 Q Anyone else?

15 A Not at that time.

16 Q What about Mr. Derfner?

17 A Mr. Derfner's voice was on there. I could identi-  
18 fy it now because I have spoken to him since then.

19 Q Did there come a time when Mr. Allen reviewed  
20 that tape with you?

21 A Not that tape, no. He didn't review that tape  
22 other than listening to the tape at the Department of In-  
23 vestigations at that time. After he listened to it, we  
24 all listened to it, he acknowledged that that was the con-  
25 versation.

1 qb-14

Doonan-direct

1407

2 Q Did you prepare a transcript of this conversa-  
3 tion?

4 A Yes.

5 Q Mr. Doonan, do you have that tape recording with  
6 you?

7 A I have the tape, yes.

8 MR. SORKIN: Your Honor, shall we mark these  
9 now?

10 THE COURT: Now is as good a time as any so we  
11 know what we are talking about.

12 MR. SORKIN: Will you mark this as Government  
13 Exhibit 100.

xxx 14 (Government Exhibit 100 marked for identi-  
15 fication.)

16 Q How many times have you heard this tape recording?

17 A Ten times, 15 times.

18 Q Did you prepare a transcript of this tape?

19 A Yes, I did.

20 Q Do you have a copy of that transcript with you?

21 A No. It is down there on the desk.

22 THE COURT: We can save a lot of time if your  
23 assistant here would get himself set to help us out a little  
24 bit.

25 Q Let me show you now what we will mark as Govern-



1 qb-15

Doonan-direct

1408

2 ment Exhibit 100A. After it is marked I will ask you  
3 if you can identify that.

xxx

4 (Government Exhibit 100A was marked for  
5 identification.)

6 Q Would you look at that, please, and I ask you  
7 if you can identify that?

8 A Yes.

9 Q Tell us, please, what it is.

10 A This is a transcript of a recording made of a  
11 telephone conversation between Allen and Frank on February  
12 28, 1974.

13 MR. GOULD: Can I interrupt for a second, your  
14 Honor. There is a place on Page 3 of this where something  
15 is blacked out. Do you have some special explanation  
16 for that?

17 MR. SORKIN: Yes, we do have. The special  
18 explanation that we have is that we kept the original  
19 transcript intact and this past week for legal reasons,  
20 principally Bruton, we redacted by blocking out on the  
21 tape certain references -- on Mr. Frank's tape to Mr. Stoller,  
22 and on Mr. Stoller's tape, I think once, to Mr. Frank.

23 MR. GOULD: I see what it is. All right. I  
24 understand it now.

25 Q Mr. Doonan, did counsel for Mr. Frank and Mr.

1 qb-16 Doonan-direct 1409

2 Frank listen to this tape in your presence?

3 A Yes.

4 Q When was that?

5 A It was during the summer.

6 Q This past year?

7 A Yes, probably around June of 1974.

8 Q Finally with respect to this particular tape,

9 did Mr. Allen, before this tape was played, consent to

10 have the recording overheard?

11 A Definitely.

12 Q Definitely what?

13 A Yes.

14 Q Mr. Doonan, let me direct your attention to the

15 very next day, March 1, 1974, at approximately 9:30 in

16 the morning. Could you tell us where you were?

17 A I was at the U. S. Attorney's office.

18 Q Were you with anyone?

19 A Mr. Allen was with me.

20 Q Did you go any place?

21 A Yes. Mr. Allen, myself, Mr. Bogan and Mr. John

22 Buckley all went down to the Department of Investigations

23 down at 111 John Street.

24 Q Who is Mr. Bogan and Mr. Buckley?

25 A Mr. Bogan is a criminal investigator with the

2 U. S. Attorney's office and John Buckley is a criminal  
3 investigator with the U. S. Attorney's office.

4 Q When you got to the Department of Investigations,  
5 what if anything did you do?

6 A We met with Thomas Scalley, who is an investiga-  
7 tor with the Department of Investigations. Mr. Scalley  
8 placed a Nagra tape recorder on Mr. Allen's person and  
9 also gave him a Kel kit that was going to also be carried  
10 by Mr. Allen.

11 Q Did Mr. Allen consent, Mr. Doonan, prior to  
12 the placing of these devices on his person to have the  
13 conversations recorded?

14 A Yes.

15 Q Did he have anything in his possession?

16 A Yes, he had the affidavit that he received from  
17 Mr. Frank.

18 Q Would you tell the Court what a Nagra is and what  
19 a Kel is?

20 A A Nagra is a small tape recorder run on batteries.  
21 It is I guess about six inches long, and about half an inch  
22 thick. It is self-contained, battery-operated. It can  
23 be worn on the side underneath the arm and it has a micro-  
24 phone.

25 Q Was this placed on Mr. Allen's person?

1 qb-18 Doonan-direct 1411

2 A Yes, it was.

3 Q You mentioned a Kel kit. What is that?

4 A It is a transmitting device. The transmitter  
5 transmits a signal to another location where at the other  
6 location there is a tape recorder and a receiving device.  
7 The conversation can be recorded in that manner.

8 Q After you completed this at the Department of  
9 Investigation where did you go?

10 A We went down to my car and drove up to East  
11 47th Street between Third Avenue and Lexington Avenue.

12 Q Who were you with?

13 A Mr. Buckley and Mr. Scalley.

14 Q Did there come a time when Mr. Allen exited  
15 the car?

16 A Yes. Prior to him leaving the car we activated  
17 the recording equipment. We instructed him not to touch  
18 the recording equipment and we would deactivate it when he  
19 returned to the car.

20 He left the car and Mr. Buckley left the car  
21 and followed him. We followed Mr. Allen also. We drove  
22 up to Lexington Avenue, down Lexington Avenue to East 44th  
23 Street, and parked about 100 feet from 144 East 44th Street.  
24 We watched Mr. Allen go into the building.

25 Q Mr. Doonan, let me go back for a moment. I

1 wanted to ask you this before and I forgot.

2  
3 Was Mr. Allen instructed by Mr. Edwards with  
4 respect to the affidavit that he had in his possession?  
5 Were any instructions given to him?

6 A Yes, he received specific instructions that if he  
7 was to have any conversations with Mr. Frank those conversa-  
8 tions only were to relate to that affidavit.

9 Q How long was Mr. Allen at 144 East 44th Street?

10 A Thirty, 35 minutes.

11 Q Did you overhear the conversation Mr. Allen  
12 had with someone?

13 A Yes.

14 Q Where were you at the time?

15 A I was in a parked car about 100 feet from 144  
16 East 44th Street. I was with Mr. Scalley. We had the  
17 other end of the Kel operating equipment in the back of  
18 the car which included the receiving device and the recorder,  
19 and we could overhear the entire conversation.

20 Q While you were overhearing the entire conversa-  
21 tion was a tape also being made of the conversation?

22 A Yes.

23 Q Did there come a time when Mr. Allen exited  
24 the building?

25 A Yes.

1 qb-20 Doonan-direct 1413

2 Q Did he return to your car?

3 A He walked east on 44th Street to Third Avenue  
4 and then north to East 45th Street. We followed him in  
5 the car and picked him up on East 45th Street.

6 Q Was anything removed from his person?

7 A At that time we deactivated the recording equip-  
8 ment, sat in the back seat and drove down to the Department  
9 of Investigation and removed the equipment from him down  
10 there.

11 Q Do you have in your possession now, Mr. Doonan,  
12 a tape of the conversation that you overheard?

13 A Yes, I do.

14 Q Could we have it, please?

15 A Yes. This is --

16 MR. SORKIN: Let's mark it first before you  
17 identify it.

18 May we have this marked as Government Exhibit  
19 101, please.

xxx 20 (Government Exhib it 101 was marked for  
21 identification.)

22 Q What is this?

23 A That is the tape, the recording of Mr. Allen  
24 and Mr. Frank talking that came over the Kel kit. This is  
25 the recording that was made in our car.

1 qb-21 Doonan-direct 1414

2 Q That is the original?

3 A That is the original.

4 Q Do you have the Nagra with you?

5 A Yes, I do. It is in this envelope.

6 MR. SORKIN: May we have the Nagra marked as  
7 Government Exhibit 101A.

xxx 8 (Government Exhibit 101A was marked for  
9 identification.)

10 Q Have you listened to 101 and 101A?

11 A Yes, I have.

12 Q Are they identical conversations?

13 A Yes, they are.

14 Q Are they the conversations that you overheard?  
15 Do they accurately reflect the conversation you overheard?

16 A Yes.

17 Q Mr. Doonan, let me show you what we will mark  
18 now as 101B.

xxx 19 (Government Exhibit 101B was marked for  
20 identification.)

21 Q Let me show you what has been marked as 101B.  
22 Would you look at this and tell me if you can identify  
23 that?

24 A Yes. This is a transcript of the conversation  
25 between Allen and Frank on March 1, 1974.

1 qb-22 Doonan-direct 1415

2 Q Does that accurately reflect the conversation

3 you overheard?

4 A Yes.

5 Q Does it reflect accurately -- withdrawn.

6 This transcript was prepared from which tape?

7 A This transcript was prepared from a copy of the

8 Nagra tape recording. Nagra has better clarify on it and

9 it is easier to listen to.

10 Q Was the Nagra transcribed to a reel to reel?

11 A Yes.

12 Q And was the reel to reel the tape used in order

13 for this transcript to be prepared?

14 A Yes.

15 Q Mr. Doonan, let me ask you this: Were you able

16 to identify the voices on the conversation you overheard?

17 A Yes.

18 Q What voices were you able to identify?

19 A I was able to identify Mr. Frank's voice. I

20 was able to identify Mr. Allen's voice. I subsequently

21 became able to identify somebody else's voice.

22 Q Who was that?

23 A Connie Medica.

24 Q Who was Connie Medica?

25 A To my knowledge she is a secretary at the



2 firm of Feldshuh & Frank. I believe she is Frank's  
3 secretary, but I am not sure.

4 Q I notice on 101B and 100A you refer to the  
5 initials "J.A., T.S., M.F. and Connie." Could you tell  
6 us what those initials stand for?

7 A J.A. is Jerome Allen. M. F. is Martin Frank,  
8 and T.S. is Thomas Galley. Connie Medica is there.

9 Q There is an unknown here?

10 A Yes.

11 Q You could not identify that voice?

12 A Right.

13 Q Mr. Doonan, on the tape Mr. Allen gives per-  
14 mission for these recording devices to be placed on  
15 him?

16 A Correct.

17 Q Did he give permission to have the recording  
18 devices placed on him prior to the time you went up to  
19 Mr. Frank's office?

20 A Yes.

21 Q Let me show you, Mr. Doonan, or let me direct  
22 your attention to March 6, 1974, at approximately early  
23 evening, 7:00 o'clock, 7:30.

24 Did you receive a telephone conversation?

25 A I received a telephone call from Mr. Jerome

1 qb-24 Doonan-direct 1417  
2 Allen. I spoke to Mr. Allen and I spoke to Janice  
3 Allen.  
4 Q What did Mr. Allen tell you?  
5 A He said he was scared stiff, that his life had  
6 been threatened. He put his wife on and his wife told me  
7 that Mr. Stoller had called and threatened his life, her  
8 husband's life.  
9 Q Did Mr. Allen ask you to do anything?  
10 A He asked me to come up there immediately and  
11 he was looking for protection.  
12 Q Did you go up to his apartment?  
13 A He also asked me to come up and record any con-  
14 versations chat Mr. Stoller and he may have if he called  
15 later on.  
16 Q Mr. Doonan, when you got up to Mr. Allen's  
17 apartment what if anything did you do?  
18 A Well, Mr. Allen was the only one there when we  
19 arrived and I went up there with Mr. Bogan. Mr. Allen  
20 showed us the phone that he was receiving the calls on which  
21 was the phone in his den.  
22 Q What number was that?  
23 A 249-0456.  
24 Q Go ahead.  
25 A We placed a coil on the telephone and we hooked

2 it up to a Sony tape recorder. I instructed Mr. Allen  
3 that we would only record conversations that he had with  
4 Mr. Stoller and nobody else. He was instructed that if  
5 the phone was to ring after he answers it to let us know  
6 whether it was Mr. Stoller on the other end. If so we  
7 would activate the recording device.

8 Q Did he consent to that?

9 A Yes, he did.

10 Q Did there come a time at approximately 8:40  
11 when the telephone rang?

12 A Yes.

13 Q Did Mr. Allen pick up the phone?

14 A Yes.

15 Q Did Mr. Allen have a conversation with someone?

16 A Yes.

17 Q Did you activate the tape recorder?

18 A Upon his signal I activated the tape recorder.

19 Q Did you overhear Mr. Allen talking?

20 A Yes, I did.

21 Q Did there come a time when Mr. Allen hung up  
22 the phone?

23 A Yes..

24 Q After he hung up the phone what if anything  
25 did you do?

1 qb-26 Doonan-direct 1419  
2 A I rewound the tape and played it back and  
3 listened to it.  
4 It was a conversation between Mr. Allen and  
5 Mr. Stoller.  
6 Q Were you able to identify the voices?  
7 A Yes, I was.  
8 Q Mr. Doonan, let me direct your attention to approx-  
9 imately 9:15.  
10 Did there come a time when Mr. Allen's telephone  
11 rang again?  
12 A Yes.  
13 Q Did he pick up the phone?  
14 A Yes.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

End 6A

1 jgrf 6b pm 1 Noonan --direct

2 Q Did he give you a signal?

3 A Yes, he did.

4 Q Did you activate the tape recorder?

5 A Yes, I did.

6 Q Did you overhear him talking?

7 A Yes, I did.

8 Q Did there come a time when he hung up the  
9 phone?

10 A Yes.

11 Q After he hung up the phone what if anything did  
12 you do?

13 A The tape was rewound and we listened to that  
14 conversation.

15 Q You are talking about two conversations?

16 A Correct.

17 Q Are these two conversations on one or two tapes?

18 A They are on one cassette tape.

19 Q Do you have it with you?

20 A Yes, I do.

21 Q May we have it, please?

22 A Yes.

23 MR. SORKIN: May we have this marked as  
24 Government's Exhibit 102, please.

25 While it is being marked, let me show you some

1 jgrf 2 Noonan -direct  
2 writing on the face of it. Can you identify that writing?

3 A Yes, that is Allen's handwriting. He wrote  
4 it at my request and he wrote, "Allen telephone conversation  
5 between J. Allen and Phil Stoller on March 6, 1974."

6 Q In your presence?

7 A In my presence.

8 Q Are those your initials on the bottom as well?

9 A Yes.

10 Q What date?

11 A March 7, 1974.

12 Q The day after the conversation?

13 A That is correct.

14 (Government's Exhibit 102 marked for  
15 identification.)

xx

16 Q Mr. Doonan, is this the original?

17 A Yes.

18 Q Let me show you, Mr. Doonan, what I will mark  
19 now as Government's Exhibit 102-A and 102-B.

20 (Government's Exhibits 102-A and 102-B marked  
21 for identification.)

xx

22 Q Will you look at 102-A and I will ask you if you  
23 can identify that, Mr. Doonan.

24 A This is a transcript of the telephone con-  
25 versation between Mr. Allen and Mr. Stoller on March 6,

1 jgrf 3 Noonan.-direct

2 1974.

3 Q Which conversation?

4 A This is the first conversation, the one at 8:40  
5 p.m.

6 Q Were you able to identify the voices on that?

7 A Yes.

8 Q Who are the voices you were able to recognize?

9 A Jerome Allen and Philip Stoller.

10 Q Is Mr. Allen's voice on the tape the same as  
11 what he said when you overheard him?

12 A Yes.

13 Q Let me show you what has been marked as 102-B.  
14 Would you look at that, please.

15 Can you identify that?

16 A 102-B is a transcript of a telephone conversation  
17 between Mr. Allen and Mr. Stoller on March 6, 1974 and  
18 the conversation was recorded about 8:15 p.m.

19 Q Were you able to identify the voices on that,  
20 Mr. Doonan?

21 A Yes, I was.

22 Q What voices did you recognize?

23 A Mr. Allen's voice and Mr. Stoller's voice.

24 Q And 102-A and 102-B, and indeed 100-A and  
25 100-B are accurate transcripts of the four tapes we have

1 jgrf 4 Noonan, direct

2 identified?

3 A Yes.

4 Q Just a few more questions, Mr. Doonan. Who  
5 initiated the telephone conversations in 102-A and B?

6 A Those calls were received by Mr. Allen. In  
7 other words, Mr. Stoller called Mr. Allen.

8 Q And Mr. Noonan, with respect to 101-A and 100-A --  
9 I am sorry, 100.

10 Did you hear the tape of February 28th  
11 between Mr. Frank and Mr. Allen?

12 A Yes.

13 Q Was Mr. Allen asked to come up to Mr. Frank's  
14 office on the following day?

15 A Yes.

16 Q Did there come a time when Mr. Allen reviewed  
17 any or all of the tapes?

18 A Mr. Allen listened to the tape recordings of  
19 the conversations between him and Mr. Stoller and reviewed  
20 the transcripts in my office, both transcripts. He also  
21 reviewed the transcript with me of the conversation  
22 he had with Mr. Frank on March 1, 1974.

23 Q Did he make any changes or corrections or  
24 alterations in the transcripts?

25 A He didn't make any notations on the sheets



1 jqrfr 5 Noonan --direct  
2 of paper. We did ask certain things that I corrected for  
3 him. Such as in the transcript, the name Al Grosso comes  
4 up and he says that was incorrect. It wasn't Al Grosso,  
5 it was Al Brodtkin.

6 Q Which tape is that?

7 A March 1, 1974.

8 MR. SORKIN: That has been identified as 101.

9 A He also told me that the female voice on that  
10 recording was Connie Medica who I never heard of at that  
11 point.

12 Q One last question which Mr. Gould commented on.

13 Did Mr. Frank ask Mr. Allen on February 28th  
14 to come up to his office on March 1st?

15 A Yes, they made -- they arranged for him to come  
16 up at 11:30 in the morning.

17 MR. SORKIN: I think that is it, your Honor.

18 THE COURT: Do either of you gentlemen have  
19 any questions?

20 MR. FELDSHUH: I have, your Honor.

21 MR. GOULD: Do you want to go first?

22 MR. FELDSHUH: Yes, I may as well.

23 MR. SORKIN: I have no further questions.  
24  
25

1 jgrf 6

Noonan, cross

1425

2 CROSS EXAMINATION

3 BY MR. FELDSHUH:

4 Q You testified, Mr. Doonan, that in connection  
5 with the tape of Mr. Frank Mr. Allen gave you a sheet  
6 for corrections?

7 A I said he didn't give me a sheet of corrections.  
8 We discussed the transcript and I asked him certain  
9 questions. I had the transcript and he had a copy and  
10 I said, "Who is Al Grosso," and he said, "That isn't Al  
11 Grosso, it's Al Brodskin," and I corrected the name.

12 Q He actually didn't give you any piece of paper  
13 at all?

14 A No.

15 Q When you testified a few moments ago about Mr.  
16 Allen giving you consent, do you recall your testimony?  
17 That was your understanding of what he said, is that it?

18 A My understanding? I don't think it could have  
19 been any clearer. We had a meeting in Mr. Edwards' office --

20 Q That was your understanding of what he said, that  
21 is all?

22 A Yes.

23 Q He didn't listen to the tape of the telephone  
24 conversation, did he, wherein Mr. Sorkin referred to an  
25 invitation to come up to the office?

2 A He listened to that tape, yes.

3 Q He listened to that tape?

4 A We played that tape back right after it was made.  
5 We were all in the office down at the Department of  
6 Investigations and after he listened to the tape he  
7 acknowledged that that was the conversation he had just  
8 had with Frank.

9 Q But he didn't read any transcript of that tape?

10 A No, he didnot.

11 Q As of this moment he has no knowledge whether  
12 the transcript, namely 101-A, is identical with the tape  
13 taken --

14 A That is correct, he has never seen that  
15 transcript.

16 Q Do you know when the indictment came down  
17 in the TWP matter? I am not talking about the obstruction.  
18 Do you know when that indictment came down?

19 Will you concede, Mr. Sorkin that the indictment  
20 of TWP came down February 14, 1974?

21 MR. SORKIN: Yes, I will.

22 THE COURT: Anything else?

23 MR. FELDSHUH: One second, your Honor.

24 Q Mr. Doonan, the telephone call of February 28,  
25 1974 was initiated by Mr. Allen, is that right?

1 jgrf 8 Noonan--cross 1427

2 A Yes.

3 Q And it was in that conversation that you  
4 testified that Mr. Frank advised Mr. Allen in the office,  
5 is that it?

6 A Yes, 11:30 in the morning.

7 Q With regard to the March 11, 1974 conversation  
8 was any instruction given to Mr. Allen as to what words  
9 to use in conversations with Mr. Frank?

10 A I think it was more on the negative side. We  
11 told him what not to do. We told him the sole purpose  
12 in speaking with Mr. Frank was to discuss with him the  
13 affidavit which Mr. Allen contended to be false.

14 We told him not to get involved in any other  
15 discussions regarding anything else regarding Mr. Frank.  
16 He was a defendant and we didn't want to get involved  
17 in any other extraneous matter. The sole purpose was that  
18 affidavit.

19 Q Did you, in words or substance, hear anyone  
20 tell Mr. Allen to use the word perjury?

21 A He kept saying it was a perjurious affidavit.  
22 That was his word.

23 Q No one suggested that word to him?

24 A No.

25 Q How about the words, "covering tracks"?

1 A No, those were his words.

2 Q Those were his words?

3 A Yes.

4 MR. FELDSHUH: No further questions.

5 CROSS EXAMINATION

6 BY MR. GOULD:

7 Q Mr. Noonan, I am only going to refer to the two  
8 transcripts of conversation with Stoller. I am not going  
9 to address myself to the Frank business at all. You knew  
10 when you listened to those conversations that Stoller  
11 had already been indicted, didn't you?

12 A Yes.

13 Q You knew that he had a lawyer?

14 A I don't know whether he had a lawyer. Yes,  
15 he did have a lawyer because we spoke to Mr. Stolzar the  
16 day before and told him Mr. Allen pled guilty and that  
17 Mr. Allen was now a cooperating Government witness.

18 Q So you knew he had a lawyer?

19 A Yes.

20 Q And his lawyer's name was mentioned in  
21 conversation between you and Mr. Sorkin, wasn't it?  
22 You knew he had a lawyer named Stolzar?

23 A Yes.

24 Q Who did you hear it from?

1

2

A I met Mr. Stolzar.

3

Q You and Mr. Sorkin met Mr. Stolzar together?

4

A Yes.

5

6

Q Both you and Mr. Sorkin knew that Stolzar had a lawyer named Stolzar. That is all I asked you a few minutes ago.

7

8

A Yes.

9

MR. GOULD: Nothing further.

10

11

12

13

THE COURT: Is there any argument based on inaudibility of any of these tapes. You gentlemen have all heard them. I was told the other day there was not but one more chance. Is there any inaudibility argument?

14

15

16

MR. SORKIN: May I bring out from Mr. Doonan one point on audibility. I think it is relevant for the record.

17

REDIRECT EXAMINATION

18

BY MR. SORKIN:

19

Q Did you meet with Mr. Derfner this past Friday?

20

A Yes.

21

Q Where?

22

A In my office.

23

Q How long were you with him?

24

A I guess maybe two hours.

25

Q Did you review the transcript, 101-B?

1 jgrf 11

Noonan-redirect

1430

2 A Yes.

3 Q And also 100-A?

4 A We spent most of the time on the March 1st tape  
5 recording.

6 Q Did Mr. Derfner suggest changes as to what he  
7 thought was on the tape?

8 A Yes.

9 Q Have you honored, I fairly state, most of the  
10 changes?

11 A Yes.

12 Q They have been corrected as per Mr. Derfner's  
13 suggestions?

14 A Not all of the suggestions but a good part  
15 I did honor.

16 MR. SORKIN: No further questions.

17 THE COURT: I press my question:

18 Is there anybody here making any argument based  
19 on inaudibility or claim thereof?

20 MR. FELDSHUH: Yes, I am, your Honor, on behalf  
21 of the Defendant Frank. On page 5 we have objected to  
22 two items.

23 THE COURT: Page 5 of what?

24 MR. FELDSHUH: The transcript.

25 THE COURT: There are two transcripts.



1                   MR. FELDSHUH: The transcript of 101-B, namely  
2                   the transcript of the March 1st colloquy between Mr.  
3                   Allen and Mr. Frank.  
4

5                   With respect to the second paragraph from  
6                   the top where it starts out, "Al came to New York," have  
7                   you got it?

8                   THE COURT: Yes.

9                   MR. FELDSHUH: We have objected to the words  
10                  in the second line of that paragraph namely, " you did,"  
11                  and? claim that those words are unintelligible and should  
12                  be stricken.

13                  The same would read, "Al came to New York and  
14                  M.A. gave me the money and I made you the loan because  
15                  you are," and the next two words, "You did" are totally  
16                  unintelligible.

17                  THE COURT: I don't know how I am going to  
18                  answer that because I have never heard the tapes. Whatever  
19                  the tapes say the tapes say. If they differ from the  
20                  transcript I am going to instruct the jury to abide by  
21                  the tape, and their judgment. That is standard stuff in  
22                  these tape cases.

23                  MR. FELDSHUH: May I also call to your Honor's  
24                  attention that in the very first paragraph, according  
25                  to the witness' testimony, on that page, the words,



1 jqrf 13

1432

2 "Al Brodtkin" represents an alleged correction from the  
3 tape. The witness testified that that tape sounded like  
4 Grossa. I ask that be taken by your Honor after your  
5 Honor hears the tape and either strike the --

6 THE COURT: I am not going to strike anything.  
7 I am not here to do an editing job on tapes. That is not  
8 the role of the courts. We have come a long way but we  
9 haven't come that far. We are not here to tailor testimony.  
10 Whatever it may say, it may say.

11 MR. FELDSHUH: May the record indicate our  
12 objection.

13 We also object, your Honor, the sixth paragraph  
14 from the top, that sentence starting with, "And you told  
15 me." The word "gave" is unintelligible, your Honor.  
16 I want to note that for the record.

17 With regard to page 6, your Honor, the ninth  
18 paragraph from the top --

19 THE COURT: You say paragraphs and I think you  
20 mean the separate conversations.

21 MR. FELDSHUH: Yes, I am calling each one a  
22 paragraph.

23 THE COURT: The one beginning with --

24 MR. FELDSHUH: The epithetical language.  
25 We say that is unintelligible and we note our objection

1 jqrf 14

1433

2 to it.

3 THE COURT: All right. Anything else?

4 MR. FELDSHUH: Page 7, your Honor, in the tenth  
5 paragraph, and you understand it is the conversation,  
6 the tenth from the top and the eleventh, we say both  
7 of those paragraphs, the statement by Mr. Frank, the alleged  
8 statement by Mr. Frank and alleged answer by Mr. Allen,  
9 are unintelligible because it has been broken into as they  
10 are talking. I note that for the record, your Honor.

11 THE COURT: What is your basic objection to  
12 these tapes?

13 MR. FELDSHUH: My basic objection is that the  
14 entire conversation, the entire episode is tainted  
15 and cannot come in under the rule of Massiah. It is a  
16 possible indictment situation and it is specifically  
17 proscribed by Massiah in that it violates due process  
18 both under the Fifth and Sixth Amendments.

19 THE COURT: I take it you adopt the same argument,  
20 Mr. Gould?

21 MR. GOULD: Yes, your Honor, in behalf of  
22 Stoller we adopt that argument. That was the reason for  
23 my questioning.

24 MR. SORKIN: Anticipating that we have also  
25 prepared a memo on the law of Massiah and I have served

it on counsel just now.

MR. FELDSHUH: We specifically call your Honor's attention to Caldwell which I think is very close to this case. In that regard, your Honor, Caldwell is in the Court of Appeals of the District of Columbia Circuit and it bears almost an identical situation where there was an indictment, a possible indictment in former episode with respect to an alleged crime different from technically, the crime alleged in the first indictment but basically flowing out of the first indictment.

In Caldwell the Court of Appeals for the District of Columbia Circuit have emphatically said that that kind of situation in a possible indictment period is highly proscribed.

THE COURT: There is one problem and let me point it out to you. I don't know what the Government says but I suspect they may raise this. At the time all this was going on two things are beyond serious issue or discussion and in fact I will take judicial notice, I was present, I heard it, I know. First of all, Allen during all of these conversations which we have heard about in these exhibits was cooperating with the United States Attorney's office. He already entered his plea of guilty before the court by this judge who is now

speaking and I know that.

Second of all, at the time when these calls were monitored or picked up in regard to Stoller this was done at the request of Allen because he feared for his life. That has been corroborated by the unfortunate testimony of Mrs. Janice Allen here at this trial and indeed by the young son, which one I forget now, but one of the Allen boys who testified as a witness.

There were no obstruction counts returned by a grand jury at that point. Therefore, I don't really think that Massiah applies to the problem for those simple reasons.

MR. FELDSHUH: If you are addressing yourself to Mr. Stoller's conversation with Mr. Allen on March 6, that is one thing.

THE COURT: I also say the same is true with Frank. One of the obstruction counts has to do with this affidavit, correct?

MR. FELDSHUH: Yes, sir, the third count.

THE COURT: Therefore there was no indictment pending such as was pending in Massiah which the Government agents then after the indictment in that case surreptitiously did overhear having to do with the counts against that defendant in that particular case. We don't

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2 have that here.

3 MR. FELDSHUH: May I suggest to your Honor two  
4 answers to your Honor's statements.

5 Number one, and I made reference to Caldwell  
6 in the District of Columbia Court of Appeals, there too  
7 the indictment there was to influence a juror and the  
8 second episode had to do with stealing a file.

9 THE COURT: Why don't you at least give me the  
10 benefits of a citation so I can read this.

11 MR. FELDSHUH: Very well, sir. I have it right  
12 here.

13 THE COURT: Haleluja.

14 MR. FELDSHUH: Caldwell against U.S., your  
15 Honor, dated 1953.

16 THE COURT: I want a citation.

17 MR. FELDSHUH: I have a photocopy of this decision  
18 and unfortunately the top of it was sliced off so that the  
19 citation is not readily apparent, but I will have it  
20 before the close of the day.

21 THE COURT: The close of the day is right at  
22 hand. You are not going to be able to do that.

23 MR. FELDSHUH: We will have to spend a few  
24 minutes until I go through the rest of my papers to pick  
25 it up. I may have it here in just a second, your Honor,

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2 if you bear with me.

3 205 Fed. 2nd, your Honor, 879.

4 May we also, incident to that same situation,  
5 your Honor, respectfully refer you to Coplen against  
6 U.S., 191 Fed. 2nd 749.

7 THE COURT: That is our circuit.

8 MR. FELDSHUH: No, this was a companion case  
9 from D.C.

10 THE COURT: All right.

11 MR. FELDSHUH: With regard to the consent of Allen,  
12 I think that is an issue that must be heard by your  
13 Honor.

14 THE COURT: I have heard it.

15 MR. FELDSHUH: I believe, your Honor, that  
16 we can establish through the mouth of Mr. Allen on voir  
17 dire --

18 THE COURT: I wouldn't believe him if he came  
19 in here and told us anything today. The man has gone  
20 through a period where he now claims the Government did him  
21 in. The Government doesn't have to produce him. They  
22 produced Mr. Doonan. He was there. Read United States  
23 versus Bonano last fall in this circuit. It is right  
24 on the month. They don't have to produce Allen and who  
25 says I would believe him anyhow. I know what he has been

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2 up to. He has been telling me what he is up to in  
3 open court. He is trying to get out from under his  
4 plea now.

5 MR. FELDSHUH: That is right.

6 THE COURT: Don't tease me, my dear Mr. Feldshuh.  
7 We are in a day in our Alice's garden why everything we  
8 do, that is not reality. Jerome Allen would tell me anything  
9 now to get out from under his plea. He was cooperating  
10 back then.

11 MR. FELDSHUH: Yes, he was.

12 THE COURT: There is no reason for me to disbelieve  
13 Doonan.

14 MR. FELDSHUH: May I say this --

15 THE COURT: Let me say this, the significance  
16 of something I said earlier escaped you. And this doesn't  
17 affect Mr. Frank's over here because they are quite  
18 different but so far as Stoller is concerned, we already  
19 know about Stoller's cause. Everything is corroborated  
20 in that regard.

21 I don't have any reason to disbelieve Mr.  
22 Doonan in any event. I am telling you right now  
23 bringing in Allen and having a swearing match with Doonan  
24 on this would do no good because then we would hear  
25 Edwards and Bregman and a few other people known as O'Brien



Scalley and heaven knows who else is involved. Don't tease me how Jerome Allen --

MR. FELDSHUH: It is not a question of teasing but of penetrating through.

THE COURT: I just penetrated through it for you, my boy. I wouldn't believe him if he came in here because I just don't believe him in any way on these matters. He stopped cooperating.

MR. FELDSHUH: May I then suggest for this record as a matter of offer of proof that if Allen were called in --

THE COURT: What do you think he would say?

MR. FELDSHUH: He would say he was forced to do this. I would say also that certain representations were made to him that induced him to do it.

THE COURT: Maybe so but --

MR. FELDSHUH: Your Honor should have the opportunity of hearing him.

THE COURT: I have no reason to draw such wild surmises for the reasons I just tried to tell you. I have no reason. Do you think he is going to be able to persuade me as against Doonan, Edwards, Bregman?

MR. FELDSHUH: But it is the factual background as to this that Mr. Doonan has. The consent is a conclusion



that these people draw. I am not trying --

THE COURT: It is a very realistic conclusion. Allen was singing for his supper. Come on. I don't mind spending time in American courtrooms like this one but I do seriously regret dilating about impracticalities.

Please, you know that.

MR. FELDSHUH: Sir, with regard --

THE COURT: When a man is cooperating you are telling me now that his consent was not freely given. That is what you are really saying. You have no proof of that whatsoever.

MR. FELDSHUH: Except the man himself. If we had him subpoenaed and interrogated him he would so indicate.

THE COURT: Why don't you bring him in?

MR. FELDSHUH: All right, I shall. I want an opportunity to do so.

THE COURT: All right. Do you have any other witnesses?

MR. SORKIN: Yes.

MR. FELDSHUH: I would respectfully direct your Honor's attention to the Communications Act, Section 501.

THE COURT: That is also covered in Bonano. Judge Friendly went right down through it. It is a very

comprehensive opinion and typically so. He covered all the bases including the communications. I am going to read your cases.

MR. FELDSHUB: I also suggest 501 where we talk about divulgence or publication of a communication without consent.

THE COURT: I understand.

Mr. Gould, what do you want to add to this?

MR. GOULD: I was reading Massiah a little more broadly than apparently your Honor was. I am a little troubled by it. I must confess that my first reaction to it was precisely what the Court said. The mere fact that a man was under indictment and had a lawyer didn't immunize him from any kind of investigation.

THE COURT: I believe there are cases that so hold since Massiah.

MR. GOULD: If you read Massiah literally then the answer has to be no. If you read Massiah literally on the facts there in Massiah there was a continuing investigation and the Court says, "We don't say you can't go ahead and investigate. By all means," they say, and I am reading from 377 U.S. 206. They say, "By all means, go ahead and investigate." But, they say, they accept the Solicitor General's argument and his argument was the one I conceded that immediately came to my mind.

1                   jgrf 23  
2                   We may accept, at least for present purposes,  
3                   completely approve all that this argument implies for  
4                   the amendment problems, to one side. We do not question  
5                   that in this case. As in many cases it was entirely proper  
6                   to continue an investigation of the suspected criminal  
7                   activities of a defendant and his alleged confederates  
8                   even though the defendant had already been indicted.  
9                   Then comes what I think is the language fatal to  
10                  their position. "All that we hold is that the defendants'  
11                  own incriminating statements obtained by federal agents  
12                  under the circumstances here disclosed could not consti-  
13                  tutionally be used by the prosecution as evidence against  
14                  him at his trial."

15                  The way I read that -- and I think we have two  
16                  different problems. I am not going to steal Mr. Feldshuh's  
17                  act. I think with respect to the Frank thing there is  
18                  no question about it. When we read the transcript we  
19                  see they didn't set this fellow up to question him only  
20                  about this affidavit. He was all over the lot on this  
21                  statement. He was right into the whole Training With The  
22                  Pros situation. To that extent Massiah kills it.

23                  At the very most what you have to do if you are  
24                  going to apply any kind of interpretation of Massiah  
25                  to the Frank situation is limit the transcript to what Mr.

Allen said to Stoller and Stoller said to Allen on the affidavit, at the worst. Training With The Pros stuff is out on Massiah. Now come down to the conversation with Stoller. That is a little different. I concede, and my first reaction when my people told me about this situation was, "Holy gosh, it can't possibly immunize the defendant from any kind of electronic surveillance even if a fellow is charged with securities fraud and he goes out and sells counterfeit money or narcotics or something like that."

It doesn't make sense. Yet here is the language which I think is broad enough to do just that. Maybe what we have to do is go back to the Supreme Court and say that the umbrella that you gave these people is too broad. All we hold is that the defendants' own incriminating statements in circumstances close to this in Massiah can't be used against him in the trial.

THE COURT: I think what I am going to do is this: I promised Mr. Feldshuh that I am going to reread Massiah. I don't have anywhere near the precise recall of that famous case, and it is a famous case. I am also going to read all these other cases and also these transcripts. Because the point you both make in respect of what happened in the overhear of Martin Frank, I think

it is a good one, seemed to me that it went well beyond the affidavit and there was a reason for Mr. Edwards insisting that the thing be confined to the affidavits.

MR. GOULD: If he did. Allen did not follow his instructions and to the extent he didn't you can't penalize Frank.

THE COURT: I understand that.

I think, Mr. Sorkin, we are going to have to look into this a little more carefully. I think you better get your other witnesses lined up for tomorrow and give us some time. This is not quite as easy as might be said by me or anyone else so minded.

If you claim that you want to get Jerome Allen in here, Mr. Feldshuh, fine. I don't hold out much confidence because I knew what Allen has been telling me in court which you haven't had the benefit of. You weren't there and I was. In any event, if you want to bring him in and he wants to claim he was coerced or somebody was on his neck or his windpipe or they had a gatling gun at his navel or something like that, it wouldn't surprise me if he said that.

MR. SORKIN: As per Mr. Gould's argument, I think if you are going to read the transcript along the lines of what Mr. Gould said, I think your Honor ought

to take a copy of what is in evidence, the affidavit that Mr. Frank gave to Mr. Allen. Our position is, your Honor, that --

THE COURT: You are quite right. I was going to add that one of the reasons I want you to have other witnesses is that I have never been shown the Stoller affidavit, that I know of.

MR. SORKIN: You mean Frank.

THE COURT: Yes, the Frank prepared affidavit that Allen claims that Mr. Frank coerced him into signing or tried to.

Mr. Noonan has given me a copy and I will read that. 10:00 o'clock tomorrow morning with other witnesses and I will take this matter up with you. You let me know. You are serious about getting Jerome Allen?

MR. FELDSHUH: Yes. I will let you know definitely tomorrow morning at 10:00 o'clock.

MR. GOULD: Are we talking about Jerome Allen as a witness on this voir dire?

THE COURT: Yes, sir.

MR. FELDSHUH: Only on the voir dire, of course.

MR. GOULD: I am so disappointed.

MR. SORKIN: The last point I want to make is that your Honor in looking at the entire Frank affidavit

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2 that Mr. Allen got realizes it runs the whole gamut of  
3 Training With The Pros and denies each allegation of  
4 the indictment.

5 MR. GOULD: That is exactly why I say we have  
6 a Massiah problem.

7 THE COURT: All right, gentlemen, you are clear.  
8 Thank you and goodnight.

9 (Adjourned to September 24, 1974 - 10:00 a.m.)  
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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
James W. Feeney	1230	1277		
Thomas Doonan	1397	1425		

EXHIBIT INDEX

<u>Stoller</u>	<u>Identification</u>	<u>In Evidence</u>
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Government

101	1413
101A	1414
101B	1414
102	1421
102A	1421
102B	1421



1 hprf

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2 United States of America

3 vs

4 Philip Stoller and Martin Frank

New York, New York  
September 24, 1974-10:00 a.m.

5 (Trial resumed.)

6 (In the robing room, discussion off the record.)

7 (In open court.)

8 THE COURT: Good morning ladies and gentlemen.

9 I apologize for the delay. However, we were taking up some  
10 matters which hopefully may expedite things. Now we  
11 are ready to proceed with our next witness, I believe.

12 MR. SORKIN: Your Honor, we left yesterday  
13 with Mr. Doonan. We would like to postpone his testimony  
14 and continue.

15 The Government calls Mel Schneiderman.

16 M E L V I N S C H N E I D E R M A N, called  
17 by the Government, being first duly sworn, testified  
18 as follows:

19 MR. SORKIN: May I proceed, your Honor?

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. SORKIN:

23 Q Mr. Schneiderman, please keep your voice up.

Mr. Schneiderman, let me direct your attention to February 1969. Would you tell us, please, where you were employed?

A I was employed at Edward F. Henderson & Company, Incorporated.

Q What was Edward F. Henderson & Company, Incorporated?

A Stock dealers.

Q What did you do there?

A Market maker.

Q What do you mean market maker?

A I bought and sold stock.

Q Do you know a gentleman by the name of Philip Stoller?

A Yes.

Q When did you first meet Mr. Stoller?

A As best I can recall I believe I met him either in '67 or '68.

Q Do you see Mr. Stoller in the courtroom today?

MR. GOULD: I concede he knows Mr. Stoller and has identified Mr. Stoller.

Q Do you know a gentleman by the name of Jerome Allen, Mr. Schneiderman?

A Yes, I do.

Q When did you first meet him?

1 hprf 3 Schneiderman-direct 1450  
2 A About the same time.  
3 Q Do you remember where?  
4 A I believe I met him at the offices of Stoller,  
5 Levin, or Levin, Stoller.  
6 Q Let me direct your attention to 1969. Did there  
7 come a time when you had a conversation with Mr. Stoller?  
8 A Yes.  
9 Q Was it in person or over the telephone?  
10 A I don't remember.  
11 Q Where were you at the time that you had the  
12 conversation?  
13 A I was either at my office or at their office.  
14 Q Now tell us, please, what Mr. Stoller said to  
15 you and what you said to Mr. Stoller?  
16 MR. GOULD: I object to that, your Honor. This  
17 man doesn't even remember whether it was some person or  
18 by telephone.  
19 THE COURT: Objection is overruled. Go ahead.  
20 Q Tell us, please, what Mr. Stoller said to you  
21 and what you said to Mr. Stoller?  
22 MR. FELDSHUH: Your Honor, objection, subject  
23 to connection, sir.  
24 THE COURT: Yes.  
25 Q Tell us please Mr. Schneiderman what Mr. Stoller

1 hprf 4 Schneiderman-direct 1451  
2 said to you and what you said to Mr. Stoller.  
3 MR. GOULD: Aren't we entitled to know if it was  
4 a personal conversation where it took place and who was  
5 present?  
6 THE COURT: In fullness of time I hope we will  
7 get after these matters as best as possible.  
8 A Either it was at the offices of Levin, Stoller or --  
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Q Please keep your voice up.

3

A Either it was at the offices of Stoller or he called me at my office, and he told me that he had a new promotional called Training With the Pros, and he said he was going to run the stock and let me know what it traded.

7

Q Was Mr. Allen's name mentioned?

8

A Yes.

9

Q Please tell us what he said.

10

A He also said that Mr. Allen and himself controlled a large block of the stock.

12

Q Did there come a time when Mr. Stoller called you a second time?

14

A Yes, I believe he called me some time in February and told me to make a market in the stock.

16

Q Did he say anything else to you?

17

A He also said if I run into any problems to give him a call.

19

Q Do you recall any further conversation?

20

A I don't believe so.

21

Q Did you then make a market in Training With the Pros?

23

A Yes, I did.

24

MR. SORKIN: I have no further questions, your Honor.

25

## CROSS-EXAMINATION

BY MR. GOULD:

Q Mr. Schneiderman, how long have you know Mr. Stoller?

A As I stated, I believe I have known him off and on since '67.

Q And you have said that you were a market maker. Would you be good enough to explain to the Court and jury what a market maker is?

A Market maker makes markets in stock issues and we buy and sell stock.

Q The fact is, sir, that a market maker is a man who buys and sells for his own account or the account of the firm that he works with, isn't that right?

A Yes, also for customers.

Q Also for customers. But you don't make market for customers, do you?

A No.

Q Normally you have an inventory of the stock, isn't that right?

A Not necessarily.

Q Normally, you try to make your profit on purchases and sales of an over-the-counter security, isn't that it?

A Yes.

1 hpb-3

Schneiderman-cross

2 Q That is your business?

3 A Yes.

4 Q And you are always looking for securities to trade,  
5 aren't you?

6 A Correct.

7 Q And from time to time people suggest to you that  
8 you should trade a particular security, isn't that right?

9 A Correct.

10 Q It was normal routine for someone to suggest to  
11 you that you might be interested in a particular security  
12 for market making?

13 A I will go along with that.

14 Q That is part of the business, isn't it?

15 A Yes.

16 Q And you heard from Mr. Stoller that he had an  
17 interest in a particular security that you might be interested  
18 in making a market in, correct?

19 A Correct.

20 Q It wasn't unusual, was it?

21 A You might say so.

22 Q It has happened before, hasn't it, that someone  
23 called you and said that he had an interest in a particular  
24 security and you might be interested in making a market?

25 A Well, it is unusual in the fact that he did

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Schneiderman-cross

control the stock.

Q Do you know that he controlled the stock?

A He said that he did.

Q Well, when you heard that he controlled the stock, didn't you ask him whether there was any danger in the situation?

A Well, when he said I should call him if I ran into any problems, I didn't expect any danger.

Q Did you ask him how much stock he controlled?

A No.

Q Did he tell you how much stock he controlled?

A He said most of it.

Q What did he say?

A Most of it.

Q Most of the stock. Did you tell us that before, that he said most of the stock?

A I believe so.

Q Didn't you say before a substantial block?

A To me that means the same thing.

Q You think a substantial block means most of the stock?

A Yes.

Q Well, if I called you and I told you that I owned 50,000 shares of Singer Sewing Machine, that is a pretty



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substantial block, isn't it?

A No, it is not.

Q 100,000 shares?

A No, it is not.

Q 200,000 shares?

A No.

Q Did you ever trade 200,000 shares of a stock like that in your life?

A Did I ever trade?

Q Yes.

A Of that particular stock?

Q You don't call that a substantial stock?

A Not according to the stock that is outstanding.

Q Did you know how much stock of Training With the Pros was outstanding?

A I believe he stated somewhere about 35, 40,000 shares.

Q Thirty-five or 40,000 shares and he said he controlled most of it, right?

A Yes.

Q Now, you tell us that this conversation was either on the telephone or in person, is that correct?

A Correct.

Q Don't you remember having a conversation with

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Schneiderman-cross

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him face to face?

A I don't remember.

Q Don't you remember sitting on the telephone and having a conversation with him?

A I just said I don't remember.

Q But you remember what he said to you and you said to him?

A Right.

Q Let me ask you something. When for the first time did you ever tell about this conversation to anybody?

A I don't recall.

End 1B

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gab-1

Schneiderman-cross

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2

Q There was a time when you communicated with  
either Mr. Sorkin or Mr. Doonan, isn't that right?

4

5

6

A Well, if that is what you mean. I thought maybe  
you were going back as far as the Securities and Exchange  
Commission when they investigated the stock.

7

8

Q Did you tell this to the Securities and Exchange  
Commission?

9

A I don't remember if they asked me.

10

11

Q Do you remember informing the Securities and Exchange  
Commission back in 1969 of this conversation?

12

A I don't remember.

13

14

Q Do you remember whether you ever appeared at the  
office of the SEC?

15

A I believe I did.

16

Q Were you questioned about this matter?

17

A I believe so.

18

Q Did you tell them of the conversation with Stoller?

19

A I don't remember if they asked me.

20

21

Q When you appeared at the office of the SEC, you  
were questioned by an officer of that organization?

22

A I believe so. I really don't remember.

23

24

Q Do you remember the name of the man who questioned  
you?

25

A No.

2 Q Do you remember whether there was a stenographer  
3 present?

4 A No.

5 Q When for the first time do you remember telling  
6 anybody about this conversation with Stoller?

7 A In June.

8 Q June 1974?

9 A Correct.

10 Q You came down to Mr. Sorkin's office, did you?

11 A Correct.

12 Q And he asked you about the conversation?

13 A Correct.

14 Q And you remembered it then?

15 A Correct.

16 Q What are you doing now, Mr. Schneiderman? What  
17 is your business now?

18 A I am unemployed.

19 Q How long have you been unemployed?

20 A Oh, about three months.

21 Q Before that what did you do?

22 A I was a stock broker.

23 Q You were what?

24 A Stock trader.

25 Q Are you the subject of any proceedings by the

gab-3

Schneiderman-cross

Securities and Exchange Commission?

A Right at this moment?

Q At anytime since 1969.

A Was I?

Q Yes, sir.

A Yes, sir.

Q What charges were made against you by the Securities and Exchange Commission?

A Administrative charges.

Q Broker, dealer revocation case, was it not?

A Yes.

Q What was the outcome of that case?

A I was suspended for six months.

Q In that case you were charged with certain fraudulent practices by the Securities and Exchange Commission?

A I really don't know if they were fraudulent practices.

Q What were the charges against you?

A I don't remember.

Q You have no idea what the charges were against you?

A Not in exact terms.

Q Just give us the substance of the charges that were brought against you.

1 gab-4

Schneiderman-cross

2 A As I can recall, I think they were for -- I really  
3 don't remember.

4 Q Did you read the charges that were brought against  
5 you?

6 A No.

7 Q Never even looked at them?

8 A No.

9 Q What year were the charges brought against you?

10 A For what year or when was it --

11 Q In what year were you charged with professional  
12 misconduct by the Securities and Exchange Commission?

13 A This year.

14 Q 1974, right?

15 A Correct.

16 Q You don't know now what it was they charged you  
17 with?

18 A I was so disgusted at the time that I really didn't  
19 care.

20 Q You say you were suspended for six months, is  
21 that right?

22 A That's correct.

23 Q Is it not the fact that you were revoked with the  
24 right to reapply at the end of six months, isn't that what  
25 happened?

1 gab-5

Schneiderman-cross

2 A As I understand it, I was suspended for six months  
3 and I could work under supervision after that.

4 Q And you have the right to reapply, do you not,  
5 for a reinstatement of the broker, dealer revocation license  
6 at the end of six months?

7 A As I understand it, I don't have to reapply.

8 Q That is your understanding?

9 A That's correct.

10 Q Where did you get the understanding from if you  
11 didn't read the charges?

12 A That's what they told me.

13 Q Who told you?

14 A The fellow that handled it at the SEC.

15 Q Who? What is his name?

16 A I don't remember.

17 Q You dealt with him must a few months ago, didn't  
18 you?

19 A I don't remember.

20 Q When was the last time you saw this man at the  
21 SEC who told you this and you can't remember his name?

22 A In April.

23 Q Let me ask you something else, Mr. Schneiderman.  
24 In the year 1969, when you had this conversation with Mr.  
25 Stoller that you remember, you made markets in a number of

1 other securities, didn't you?

2 A Yes, I did.

3 Q You had conversations with other people who sug-  
4 gested that you make market in other securities?

5 A No, not to many.

6 Q That is the only conversation you had in 1969  
7 about making a market?

8 A I didn't say that was the only. I said not to  
9 many.

10 Q Not to many. How many did you have?

11 A How many conversations did I have?

12 Q Yes, with people who suggested that you make a  
13 market --

14 A With people like Philip Stoller?

15 Q That's right.

16 A Maybe one or two.

17 Q Who were they?

18 A I don't remember.

19 Q What conversations did they have?

20 A I don't remember.

21 Q So the only conversation that you remember is the  
22 one you had with Mr. Stoller.

23 In what month of 1969?

24 A Either January or February.  
25



2 Q You had similar conversations with other people,  
3 but you don't remember who they were or what they talked  
4 about, is that right?

5 A Right.

6 Q Just Stoller is the one you remember?

7 A Well, if you come up with the stock, I'll come  
8 up with the person.

9 Q I see. How is Morris Schneiderman?

10 A My father.

11 Q Did he buy Training With the Pros?

12 A Yes.

13 Q Did he buy it at your suggestion?

14 A No.

15 Q Just an accident that he bought it?

16 A Well, he was looking for new issues.

17 Q Did you direct his attention to it?

18 A I told him about it.

19 Q Did he make a profit in it?

20 A No.

21 Q Did he hang onto it?

22 A He still has it.

23 Q Did you have any arrangements with other brokers  
24 to trade the stock of Training With the Pros back and forth?

25 A No, sir.

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2 Q Were you questioned about that at the Securities  
3 and Exchange Commission?

4 A Maybe. I don't recall.

5 Q You have no recollection. Is it possible that  
6 you spoke with Mr. Allen and not mr. Stoller?

7 A No.

8 Q You are sure that you talked to Mr. Stoller and  
9 you are sure of what he told you?

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q But you don't remember whether it was on the tele-  
14 phone or in person?

15 MR. SORKIN: Which conversation? I think there  
16 were two that he testified about.

17 MR. GOULD: Either of the conversations. He said  
18 the same about both.

19 MR. SORKIN: I don't think he did.

20 MR. GOULD: Give him a chance.

21 Q The second conversation, was that on the phone  
22 or in person?

23 A What was the second conversation?

24 Q What you said, whatever you said before. Don't  
25 you remember?

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2 A We had so many conversations. I don't remember

3 Q We are just talking about Training With the Pros.

4 You testified this morning about two conversations, didn't  
5 you?

6 A The first conversation or the second conversatinn?

7 Q Which was on the telephone?

8 A Definitely the second conversation.

9 Q How about the first?

10 A I don't recall whether it was at his office or  
11 on the phone.

12 Q But the second one you say was definitely on  
13 the telephone?

14 A Yes.

15 MR. GOULD: No more questions.

End 2A 16 MR. FELDSHUH: No questions, your Honor.

17 THE COURT: Any redirect?

18 MR. SORKIN: No, your Honor, nothing.

19 THE COURT: Thank you, Mr. Schneiderman. You may  
20 be excused, sir.

21 (Witness excused.)

22

23

24

25

1 gwrp am 2b

2 J O S E P H B O N A V I A, called as a witness  
3 by the Government, being first duly sworn, testified  
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. SORKIN:

7 MR. SORKIN: May I proceed, your Honor?

8 THE COURT: Yes, sir.

9 Q Mr. Bonavia, please keep your voice up, sir.

10 Mr. Bonavia, where do you reside?

11 A Rockford, Illinois.

12 Q What do you do for a living, sir?

13 A Commercial real estate.

14 Q How old are you?

15 A 56 years of age.

16 Q Mr. Bonavia, do you know a gentleman by the name  
17 of Jerome Allen?

18 A Yes, I do.

19 Q When did you first meet him, sir?

20 A In 1959.

21 Q Where did you meet him?

22 A In New York, the Roosevelt Hotel.

23 Q Have you ever heard of a publication called Inside  
24 Wall Street?

25 MR. GOULD: I object to this, your Honor; first

1 gwrf 2

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2 as to the form, secondly on the ground of relevancy and  
3 materiality.

4 THE COURT: On the latter I don't really see the  
5 importance of this at all.

6 MR. SORKIN: I will rephrase the question.  
7 I will withdraw it then, your Honor.

8 Q Do you know a gentleman by the name of Philip  
9 Stoller?

10 A Yes, I do.

11 Q When did you first meet him?

12 A It would have been approximately 1960.

13 Q How did you meet him?

14 A Mr. Allen introduced me to him.

15 Q Where did he introduce you to him?

16 A At Rubin, Rose & Company in New York City.

17 Q Do you see Mr. Stoller in the courtroom today?

18 MR. GOULD: Conceded he knows Mr. Stoller.

19 MR. SORKIN: And he can identify him.

20 MR. GOULD: Conceded.

21 Q Have you ever heard of a firm called Hancock  
22 Securities?

23 A Yes, I have.

24 Q When did you first hear of it?

25 A It was in 1967 or '68 or both years.

1 gwrif 3 Bonavia-direct

2 Q Did you ever go to Hancock Securities?

3 A Yes, I did.

4 Q For what purpose?

5 MR. GOULD: I object to that, your Honor.

6 It has nothing to do with this case.

7 THE COURT: You claim it has something to do with  
8 this case?

9 MR. SORKIN: Yes, your Honor.

10 THE COURT: Go ahead.

11 Q For what purpose?

12 MR. GOULD: Why are we bound by his purpose?

13 THE COURT: I question that myself. Can't you  
14 rephrase that? There must be a simpler way of doing it with-  
15 out raising this problem.

16 Q Did you meet Mr. Stoller and Mr. Allen at Hancock  
17 Securities during 1967 and '68?

18 A Yes, I did.

19 Q How many times were you there?

20 A Oh, several times, probably five or six times.

21 Q Did Mr. Stoller and Mr. Allen have an office in  
22 Hancock Securities?

23 A They had desks there, yes.

24 Q Mr. Bonavia, during the period from 1969 to 1965  
25 did Mr. Stoller and Mr. Allen recommend securities to you?

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2 MR. GOULD: I object to this, your Honor. This  
3 antedates the period of the conspiracy by years.

4 THE COURT: Yes. I think there is another purpose.  
5 I don't understand why from '50 to '65 --

6 MR. SORKIN: '59 to '65, your Honor.

7 THE COURT: '59 to '65, I really don't see the  
8 significance of that. Generally if you want to show a  
9 prior relationship, I will allow it.

10 MR. SORKIN: That is correct, your Honor. That  
11 is exactly what we want to show.

12 MR. GOULD: Let me save some wrangling on it.

13 I am prepared to concede that Mr. Bonavia  
14 knew them, that the relationship between them was that  
15 they recommended securities to them, that from time to  
16 time he bought securities on their recommendation and that  
17 they were paid a professional fee for their services. That  
18 ought to take care of all of that, I think.

19 THE COURT: We will see.

20 Go ahead, Mr. Sorkin.

21 MR. GOULD: By "they" I meant Stoller and Allen  
22 jointly.

23 Q Mr. Bonavia, did you ever hear of a bank called  
24 Bank Hofmann?

25 A Yes, I did.

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2 Q When did you first hear of it, sir?

3 A In the early 1960s.

4 Q From whom?

5 A Mr. Allen and Mr. Stoller.

6 Q Anyone else?

7 A Mr. Walter Wirth --

8 Q Don't tell us the conversation.

9 Did you hear it from a Mr. Walter Wirth?

10 A Possibly I did.

11 Q Let me direct your attention to approximately  
12 1963 and '64.

13 Did you have conversations with Mr. Stoller about  
14 Bank Hofmann during that period of time?

15 MR. GOULD: I object to that, conversations  
16 in '63 and '64.

17 THE COURT: I am inclined to sustain that. I  
18 don't think this sounds like general background.

19 MR. SORKIN: It clearly does, your Honor.  
20 Certain events took place prior to the commencement of  
21 this conspiracy which relate to Mr. Bonavia's relationship  
22 with the Defendant Stoller and Allen.

23 MR. GOULD: In view of the concession --

24 THE COURT: In other words, Mr. Sorkin, it is  
25 conceded by counsel for Stoller that there was this



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2 preexisting relationship. I don't know why --

3 MR. SORKIN: This also goes, your Honor, to  
4 Counts 11 through 16 solely to Mr. Stoller because there are  
5 certain statements that Mr. Stoller made. This has a  
6 bearing on those counts.

7 THE COURT: For the life of me this doesn't make  
8 sense if it happened in 1963. Those counts are directed  
9 to years later. You are going to have to make some offer  
10 of proof. This doesn't make sense.

11 MR. SORKIN: I will be happy to do so, your  
12 Honor.

13 THE COURT: All right, come up.  
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1 hprf 3a am Bonavia-direct 1473

2 (At the side bar.)

3 THE COURT: From your own point of view, Mr.  
4 Sorkin, you seem to want to make things difficult.

5 MR. SORKIN: Your Honor, back in 1964 and  
6 '63, Mr. Stoller suggested to Mr. Bonavia he open up a bank  
7 account in Bank Hofmann. They continued to have conversations  
8 through '65, '66, and '67, they repeatedly made admissions  
9 to him about their accounts at the bank, why it is best  
10 for him to open up an account at the bank, that they get  
11 consulting fees which are disguised and they get money from  
12 the bank which are disguised as consulting fees. One of  
13 the perjury counts in there refers to the fact Mr.  
14 Stoller says he receives fees from the bank, he doesn't  
15 have an account there, he doesn't know who has accounts  
16 and he doesn't know who has accounts and he doesn't know  
17 the client and from '65 through '68 we -- opened up an  
18 account in '65 as a result of Mr. Stoller talking to him,  
19 a full disclosure account and there will be testimony  
20 from '65 to '68 they told him to open up a secret account  
21 because through the full disclosure account the IRS, the  
22 Government could find out about him. In '68 he opened up  
23 the Barbin account.

24 MR. GOULD: Let's stay with prior to '68.

25 Now, there is no testimony here which is  
inconsistent with what you said except you said something

2 that is not in the testimony. His testimony is, I am  
3 paid by the bank, I do have a relationship with the bank.

4 THE COURT: I think that you bring these problems  
5 in large measure upon yourself. You first should elicit  
6 from him if you can when he opened an account and you  
7 tell me that is '65?

8 MR. SORKIN: One in '65 and Barbin in '68.

9 THE COURT: Let's not deal with the open ended  
10 conversations.

11 MR. GOULD: The question is when did he --

12 THE COURT: Let's proceed.

13 (In open court.)

14 MR. FELDSHUH: Your Honor, may I have a statement  
15 on the record none of it is offered against Defendant Frank?

16 THE COURT: That is up to Mr. Sorkin. I don't  
17 know as to whom he is offering it.

18 MR. SORKIN: This is offered, your Honor, to show  
19 a prior relationship to one of the defendants in the  
20 conspiracy namely Mr. Stoller and also Mr. Allen.

21 THE COURT: Let's go ahead.

22 MR. FELDSHUH: Your Honor, may we have a clari-  
23 fication it is not offered against the Defendant Frank?

24 THE COURT: Apparently not. That is the way I  
25 understand it.

BY MR.SORKIN:

Q Mr. Bonavia, did there come a time when you opened up an account at Bank Hofmann?

A Yes. In 1965 I agreed to open a full disclosure account.

Q Prior to opening this account did you have a conversation with Mr. Stoller and Mr. Allen?

A Yes.

MR. GOULD: I object to that, your Honor.

I thought your Honor had ruled with respect to that.

THE COURT: No. You didn't understand me. I said we wouldn't get into 1963.

MR. GOULD: He is talking about '65.

THE COURT: I know, and I will allow any discussions having to do with the opening of this account in 1965. That's all. I don't want to go back to '63 and go on to other conversations having nothing to do with the opening of this account.

MR. GOULD: Is your Honor going to confine it to conversations in '65 or is your Honor ruling sufficiently comprehensive so he can give conversations on the subject of the account in the three years preceding the opening?

THE COURT: No. I am talking about 1965; opening

2 this particular account, if there were any conversations  
3 having to do with this specific subject I will allow it.

4 Q You heard the Judge's ruling, Mr. Bonavia. Solely  
5 relating to the opening of this account did you have  
6 conversations with Mr. Stoller and Mr. Allen prior to  
7 the opening of the account?

8 A Yes.

9 Q When?

10 A Just prior to opening the account.

11 Q When was that, sir?

12 A It was in 1965.

13 Q Tell us, please, what was said by Mr. Stoller,  
14 by Mr. Allen and by you, and where were the conversations  
15 held?

16 A Mr. Stoller said that they had --

17 Q Where was the conversation or were there a number  
18 of conversations?

19 A There were a number of conversations and their  
20 offices moved quite frequently. I don't remember in which  
21 office. There was Levin, Stoller, Hancock Securities and  
22 I don't know how many more offices.

23 Q Tell us, please, what Mr. Stoller said?

24 A He first pointed out the advantage of not having  
25 to pay income tax. I told him I wasn't interested in

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2 that. Then he pointed out the advantage of lower margin  
3 requirements in Switzerland and said this was legal and  
4 with lower margin requirements you can purchase  
5 more stock and make more profit.

6 I said if I could get by my purchase and sales  
7 slip exactly as they occurred I would open a full disclosure  
8 account and instruct the bank that if any IRS inquiry was  
9 made on the account, to disclose everything from the  
10 account and I reported my transactions on my income tax.

11 Q Now, did you sign any documents prior to opening  
12 this account?

13 A Yes, I did.

14 Q Let me show you now, Mr. Bonavia, what has previously  
15 been marked as Government's Exhibit 52 for identification.

16 Would you look at this, please, and I ask you  
17 if you can identify that?

18 A Yes, I can identify it. I have one question, sir.

19 Q Just tell us, can you identify it?

20 A Yes, but I don't see a date on it. It was 1965  
21 or 1968.

22 Q Let me ask you this: What is it, first?

23 A It's a --

24 MR. GOULD: Wait a minute.

25 Q Just tell us generically what --

1

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2

A It's a document to open up an account.

3

Q Where did you get it?

4

A From Philip Stoller.

5

Q Where?

6

A In New York City.

7

Q Is that the original or a copy?

8

A This is a copy.

9

Q Is that an exact copy of the document you signed  
in Mr. Stoller's presence?

11

MR. GOULD: I object to this, your Honor. Can  
we have a voir dire about this? We don't have the date  
that is even legible.

14

MR. SORKIN: We haven't introduced it yet.

15

THE COURT: Let counsel for the Government finish  
it and then if you want, you may have a voir dire.

17

Q Is that an exact copy of the document you signed?

18

A Yes, it is.

19

Q Is that your signature?

20

A Yes.

21

Q Is that your wife's signature?

22

A Yes, it is.

23

Q When did your wife sign the document?

24

A The 1965 document she signed in 1965.

25

Q Now, is this the document you signed in '65?

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A Yes, it is.

MR. SORKIN: Your Honor, we offer Government's Exhibit 52 in evidence. It is against the Defendant Stoller only.

VOIR DIRE EXAMINATION

BY MR. GOULD:

Q Mr. Bonavia, how do you know you signed this in 1965?

A I remember signing it.

Q Do you really now.

A It is my signature.

Q Didn't you see a date on this when you looked at it just now?

A The 1968 document had a different name. It had a code name.

Q Mr. Bonavia, your hearing is pretty good? Is it all right?

A Yes.

Q Did you hear my question just now? Did you see a date on this when you looked at it?

A No, but the 19 --



2 Q Just yes or no, did you?

3 A No, I didn't.

4 Q Did you see a place and date in printing, the  
5 printed words "place and date"? Did you see that when you  
6 just looked at it?

7 A I didn't notice. I didn't see a date.

8 Q Let me draw your attention to something here. In  
9 this paper, you see under my thumb the words "place and date."

10 A It isn't dated.

11 Q Isn't it dated?

12 A No.

13 Q Don't you see any writing above that?

14 A I can't see that.

15 Q You can see that there is some writing above it?

16 MR. SORKIN: Don't pull it away, Mr. Gould.

17 MR. GOULD: I don't need help on that.

18 MR. SORKIN: But you are pulling it away.

19 MR. GOULD: You bet I am pulling it away.

20 THE COURT: Can you see it?

21 THE WITNESS: No.

22 Q You can't see it?

23 THE COURT: Let him look at it, Mr. Gould.

24 MR. GOULD: I am going to, your Honor.

25 Q On this particular copy, you see there is printed

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here in English the words "place and date," correct?

A Yes.

Q You see that pretty clear, don't you? Don't strain for the other yet. We will come to that. And you also see that there is a date written in above that, don't you?

A I can't see what the year is. It says June.

Q But you don't know what the year is?

A No.

Q Now, how do you know that this was in 1965?

MR. SERKIN: Your Honor, that goes to the weight of the testimony, not the --

THE COURT: I will allow that.

Q How do you know that this was in 1965?

A Because I signed two accounts, one in 1965 and the 1968 one was signed as Barbin. This one was in my own name and that was in 1965.

Q And you say that this was given to you to sign by Philip Stoller?

A Yes, he took it out of his desk drawer.

MR. GOULD: No objection to this document.

THE COURT: It will be received as to Stoller only.

(Government Exhibit 52 was received in evidence.)

xxx

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2 BY MR. SORKIN:

3 Q Mr. Bonavia, let me direct your attention now  
4 to 1967. Did you have any discussion, conversation with  
5 Mr. Stoller?

6 MR. GOULD: Same objection, your Honor.

7 THE COURT: I am going to rule that out, too,  
8 Mr. Sorkin.

9 MR. SORKIN: I will do it the way your Honor  
10 suggested --

11 THE COURT: You represented there was another  
12 account. I will allow that. I don't want these interstitial  
13 conversations.

14 Q Did there come a time when you opened up another  
15 account, Mr. Bonavia?

16 A Yes, I did.

17 Q When was that, sir?

18 A In the spring of 1968.

19 Q Prior to opening this account and confining your-  
20 self only to this account, did you have a conversation with  
21 Mr. Stoller?

22 A Yes, I did.

23 Q Where was the conversation?

24 A In the East Sixtieth Street office.

25 Q Was anyone else present?

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2 A I don't recall that anyone was present. It is  
3 possible that Mr. Allen was present.

4 Q Tell us, please, what Mr. Stoller said to you.

5 A Mr. Stoller said by having a full disclosure  
6 account, my reporting all my transactions, in my Internal  
7 Revenue return, it was opening the window through their  
8 transactions at Bank Hofmann and they had fifty to sixty other  
9 clients at Bank Hofmann that were trading in the same stocks  
10 and it was opening a window through which the Government  
11 would know what stocks they were trading in and I was the  
12 only client that had a full disclosure account.

13 He wanted a secret account. I objected to it  
14 and he said that Mr. Herbert was in town -- this was either  
15 in the latter part of '67 or early '68, I don't recall the  
16 exact date -- and he said he and Mr. Herbert had worked out  
17 something that they thought would be suitable to me if I would  
18 open a secret account.

19 MR. SORKIN: This is to Mr. Stoller only.

20 Q Did there come a time when you met Mr. Stoller  
21 and Mr. Herbert prior to opening this account?

22 A Yes.

23 MR. GOULD: Your Honor, not by way of objection  
24 but I am confused. Mr. Sorkin says he is offering this  
25 only against the defendant Stoller. I therefore must conclude

1 that he is not offering it in support of Count 1 of the  
2 indictment because if he is offering it on Count 1, he is  
3 offering it, in support of an alleged conspiracy subject  
4 to connection with other defendants.  
5

6 THE COURT: I do not think that I am called upon  
7 to make decisions for the lawyers in this case. I see  
8 your point. It is an obvious one. But, I can't answer that.  
9 The man who can answer that is Mr. Sorkin.

10 MR. SORKIN: As per Mr. Gould's suggestion, at  
11 this point we are offering this to Count 1 as to both defend-  
12 ants, and as against Mr. Stoller only on Counts 11 through  
13 16.

14 THE COURT: Mr. Sorkin, go ahead. I will take  
15 it on that basis.

16 Q Mr. Bonavia, did there come a time when you had  
17 a conversation with Mr. Stoller and Mr. Herbert prior to  
18 opening this account in '68?

19 A Yes, my first conversation was with Mr. Stoller.

20 Q Where was it?

21 A It was at the East 10th Street office.

22 Q After this conversation did you meet Mr. Stoller  
23 and Mr. Herbert?

24 A I met Mr. Stoller at, I believe it was the Rib  
25 Room at the Roosevelt Hotel. But before Mr. Herbert got

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there, we continued the conversation.

Q Was anyone else present other than yourself and Mr. Stoller?

A No.

Q Tell us, please, what you said and what Mr. Stoller said.

MR. GOULD: Can we get a date?

THE WITNESS: Mr. Stoller --

Q What was the date? When did you have the meeting --

A The latter part of '67 or early '68.

Q Tell us, please, Mr. Bonavia, what Mr. Stoller said to you and what you said to Mr. Stoller?

A Mr. Stoller reiterated the advantages of income tax. He mentioned that Mr. Herbert was probably the unscrupulous banker in Switzerland. He said he paid him consulting fees from his own account.

Q Who paid who?

A Mr. Herbert would bring checks or mail checks for consulting fees that came from Mr. Stoller's own account, and that it was not actually consulting fees. He says, "Hell, Joe, you know we are not consultants to the bank, but in that way we show some money for living that we have to show we have some income."

He said it was a standard procedure for Mr. Herbert

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2 to bring cash to him when he came on these frequent trips to  
3 New York.

4 Q Was any mention made of Bank Hofmann in this con-  
5 versation before Mr. Herbert arrived?

6 A Yes. He said --

7 MR. FELDSHUH: Your Honor, I object to so much  
8 of this conversation as is directed to the defendant Frank.

9 THE COURT: Subject to connection only with respect  
10 to Count 1 as to Frank. Let's go ahead, gentlemen. You  
11 heard this before.

12 Q Go ahead, Mr. Bonavia.

13 A He said that Bank Hofmann had the crookedest  
14 bank in Switzerland and he often referred to it as a playpen.  
15 Mr. Herbert then joined the meeting.

16 Q Did you then have a conversation with Mr. Herbert  
17 and Mr. Stoller?

18 A Yes. Mr. Stoller mentioned to Mr. Herbert that  
19 he had explained to me that they had arrived at something  
20 that might make it agreeable for me to open a secret account,  
21 and they both discussed why a full disclosure account was  
22 very dangerous to Stoller, to Herbert and Bank Hofmann,  
23 that it would disclose what stocks they were trading in.

24 Then Mr. Herbert went on to explain that he and  
25 Stoller had discussed it and they said they would mail me

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slips of purchase and sale for the exact amount of dollars, showing exact profit or loss of the transaction, but they would not use the same name of the stock actually purchased, and Mr. Herbert explained that he couldn't use an American court, and as an example, he mentioned General Motors. He said if General Motors had the same move as the stock you purchased, he said the American authorities could prove that Bank Hofmann didn't purchase General Motors at that time. He said, "so the stock names I will put on your certificates will probably be European stocks, because the American authorities cannot trace European stocks but, he said, the purchase and sale loss or profit will be exactly as what took place."

I agreed to that

End 3B



1 gab-1  
2 Q Any further conversation that you recall?

3 A Mr. Herbert told me that he would soon be president  
4 of the bank and after he was president of the bank the secret  
5 account would not be necessary, that he could change the  
6 name of the stock from the full disclosure account.

7 Q Mr. Bonavia, did there come a time when you signed  
8 some papers with this account that was opened in '68?

9 A Yes, I did.

10 Q Mr. Bonavia, let me show you now what has previously  
11 been marked as Government Exhibit 53A. Would you look at  
12 it, please, and I ask you if you can identify it.

13 A Yes, I can identify this.

14 Q Just what is the document?

15 A It is an exact copy of the document I signed for  
16 Philip Stoller to open a numbered or secret account at  
17 Bank Hofmann.

18 Q Is that your signature on there?

19 A Yes.

20 Q Where did you get that document?

21 A From Philip Stoller. He had it in his desk drawer.

22 Q Where was this, sir?

23 A At East 60th Street.

24 Q Did I ask you, is that your signature there, sir?

25 A Yes, it is my signature. However, the date is

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not correct. I signed this prior to April 30, 1968.

This was dated in Zurich on my first trip there. It was dated while I was there by a member of the bank, as I recall it.

Q After you received this document from Mr. Stoller and signed it, what did you do with it?

A I gave it to Mr. Stoller.

Q When was the next time you saw it?

A When I was in Zurich at Bank Hofmann.

Q When was that, sir?

A April 30, 1968.

Q I notice on here is the number 4318 and the name Barbin. Where did you get that name Barbin?

A When I signed the thing I said "I don't know what to call this account," and Mr. Allen said, "I knew some people by the name of Barbin. That has always stuck in my mind. Why don't you call it Barbin."

So I called it Barbin.

MR. SORKIN: We offer --

MR. GOULD: I am confused. Did he place Allen at this conversation before this?

Q Was Mr. Allen at this conversation?

A Yes.

MR. SORKIN: We offer 53A in evidence, your Honor.

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MR. GOULD: I have no objection.

MR. FELOSHUH: Subject to connection, your Honor.

THE COURT: Yes, as to our client, that is true.

(Government Exhibit 53A for identification  
was received in evidence.)

MR. GOULD: I don't think I have any objection.  
I think there were a couple of steps left out, your Honor.

Q Mr. Bonavia, is this an exact copy of the document  
that you signed and handed back to Mr. Stoller?

A Yes.

Q Where did you get the copy?

A Mr. Stoller had it in his desk drawer.

Q Where did you get the copy of the document?

A From Bank Hofmann.

Q When was that, sir?

A In 1972.

THE COURT: Is that true in respect to that earlier  
piece of paper which is called 52 in evidence? Do you  
remember that, Mr. Bonavia?

THE WITNESS: Yes, sir, it is.

THE COURT: You picked them up when you were  
over there in 1972?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

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MR. SORKIN: Your Honor, I would like to pass 52A around to the jury.

Q Mr. Bonavia, would you look at 53B and I ask you if you can identify that, sir?

A Yes, sir, I can.

Q Tell us just what it is. Don't read it.

A It is instructions to the bank as to my secret account.

Q Is that your signature on the bottom?

A Yes, it is.

Q Where was that signed?

A At Bank Hofmann.

Q When was that?

A April 30, 1968.

Q Was it signed in anyone's presence?

A There was a girl there, secretary, and Mr. Huber.

MR. SORKIN: Your Honor, we offer 53B in evidence.

Q By the way, Mr. Bonavia, where did you get this? Is this an exact copy of the document you got?

A Yes, sir.

Q And that you signed?

A Yes, sir.

Q Where did you pick up this document or a copy of this document?

1

2

A At Bank Hofmann.

3

Q When?

4

A In 1972.

5

MR. GOULD: No objection.

6

MR. FELDSHUB: Subject to connection, your Honor.

7

THE COURT: Yes, same ruling.

8

xxx

(Government Exhibit 53B for identification

9

was received in evidence.)

10

Q Mr. Bonavia, would you look at 53C and I ask you  
if you can identify that, please?

12

A Yes, sir.

13

Q Tell us, please, what it is.

14

A This is instructions to the bank pertaining to my  
account.

16

Q Where was that signed, Mr. Bonavia?

17

A Frankly I thought this was the document that you  
showed me before. This document was signed in Zurich.

19

Q You mean 53B.

20

A The documents to open the accounts were signed in  
New York.

22

Q Go ahead.

23

A This document was signed in Zurich at Bank Hofmann.

24

25

Q Here is a copy of 53B. Are you saying 53B was  
signed in New York?

1

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Bonavia-direct

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2

A The accounts, both papers to open the account,  
3 were signed in New York.

4

Q Where did you get 53B?

5

A I don't know what 53B is.

6

Q Take a look at it in your hand, that one.

7

A This is 53B?

8

Q Yes, sir. Where did you get this?

9

MR. GOULD: Your Honor, maybe we ought to have a  
10 little recess --

11

MR. SORKIN: Mr. Gould, please.

12

A Mr. Stoller gave me this --

13

MR. GOULD: Wait --

14

A -- to sign.

15

MR. GOULD: I am entitled to understand what is  
16 going on in this room, you know.

17

THE COURT: Peace, gentlemen.

18

MR. GOULD: I don't know what he is talking about.

19

THE COURT: If you subside a moment, I think we  
20 will find out.

21

Mr. Bonavia, with the assistance of these lawyers  
22 we will allow you to go back here. Let him see 53B. You  
23 and Mr. Gould have the greatest habit of handing documents  
24 around and then you take them away from the witnesses before  
25 they can look at them. You see what we marked here 53B,

1 gabQ-7

Bonavia-direct

2 Mr. Bonavia?

3 THE WITNESS: Yes, I see it up here.

4 THE COURT: Tell us if you can recollect where  
5 did you sign the original of that particular piece of paper?

6 THE WITNESS: I signed it in New York.

7 THE COURT: In New York City in the East 60th  
8 Street apartment of Stoller?

9 THE WITNESS: Yes, I did.

10 THE COURT: All right. Take a look at 53C for  
11 identification. This is the so-called instructions for  
12 opening an anonymous account?

13 THE WITNESS: This was signed at Bank Hofmann in  
14 Zurich, Switzerland.

15 THE COURT: On April 30, 1968?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right, thank you very much.

18 Q With respect to 53C, Mr. Bonavia, your wife's  
19 signature, I believe, is on it. Where did she sign it?

20 A At Bank Hofmann.

21 Q Was she with you when you went to Zurich?

22 A Yes.

23 Q You can identify her signature?

24 A Yes.

25

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Q Is this an exact copy of the document that you signed?

A Yes.

Q When did you pick this up or a copy of this?

A In March of 1972.

MR. SORKIN: Your Honor, we offer 53C in evidence.

MR. GOULD: No objection.

MR. FELDSHUH: Subject to connection, your Honor.

THE COURT: Same ruling, that is correct.

xxx

(Government Exhibit 53C for identification was received in evidence.)

Q Mr. Bonavia, let me direct your attention to July of 1968. Did you have a conversation with Mr. Stoller then?

A Yes, I did.

Q Where was it, sir?

A In the east 60th Street office.

Q Was anyone else present?

A Mr. Allen was present.

Q Anyone else?

A No, sir.

Q What was the conversation with Mr. Stoller, Mr. Allen? Tell us what each one of them said.

A Mr. Allen said that I had agreed to pay fees on any profits and I said, "Yes, that was the agreement."



2 I said, "As I recall it, it was 10 per cent."

3 He said, "Well, it was 10 per cent," he said, "but  
4 we worked hard," and he said, "Frankly I need some money  
5 and Mr. Allen needs some money and we are going to ask you  
6 for more than that."

7 I said, "How much?"

8 He said, "We need \$65,000."

9 I says, "This is far more than I owe you."

10 "Well," he said, "I know it is, but you might  
11 consider it as maybe a loan." He said, "We have a very  
12 good stock coming up, one that is going to make a lot of  
13 money, a good clean stock," and he said "We won't charge you  
14 anything on the first 300,000 of profit."

15 He said, "In fact, this stock should make far more  
16 money for you than that and we won't charge you any commission  
17 on any of the profit," and I did sign authorization for \$65,000  
18 split between Mr. Allen and Mr. Stoller evenly.

19 MR. FELDSHUH: Mr. Sorkin, will you please state that  
20 for the record.

21 THE COURT: Mr. Feldshuh, I think it is apparent  
22 by now and it will be until further notice that this is what  
23 is going on. We agree.

24 Now, Mr. Bonavia, I lost this in the conversations  
25 down in the well. I am not clear.

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Bonavia-direct

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You say that both Allen and Stoller were present.  
Is Allen doing the talking or Stoller?

A Stoller did the talking, but Allen agreed with  
him.

Stoller might say, isn't that right, Jerry, and  
Jerry would say, that's right.

1 gwrfr 4b am Bonavia-direct 1497

2 THE COURT: In other words, the one who said,  
3 reminded you that you agreed to pay a fee, who was that,  
4 Stoller or Allen?

5 THE WITNESS: Stoller.

6 THE COURT: And then who was the one who said  
7 that they both needed \$65,000 between them?

8 THE WITNESS: Stoller.

9 THE COURT: Stoller?

10 THE WITNESS: Yes.

11 THE COURT: As I understand it, you agreed  
12 to give them \$65,000. For what?

13 THE WITNESS: It was for past commissions and  
14 I didn't feel that I owed them over \$15,000, but they said  
15 "Consider the rest of it as a loan and you won't have  
16 commissions paid for the first 300,000 and probably over  
17 that."

18 He said, "It will be a loan to us."

19 THE COURT: All right.

20 Is this in relation to some specific stock that  
21 they were talking, that they needed this loan for?

22 THE WITNESS: I don't know. They just said  
23 they were badly in need of money.

24 THE COURT: All right.

25 Next question.

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Bonavia-direct

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2 Q Mr. Bonavia, would you look at what has previously  
3 been marked as Government's Exhibit 58-A. Just tell us  
4 what it is.

5 A This is a document --

6 Q Is it a statement of account?

7 A It is a statement of account from Bank Hofmann  
8 and it shows the payment --

9 Q Don't tell us what it shows. Whose account?

10 A It is my account.

11 Q When did you pick up this document?

12 A In March of 1972.

13 Q Is this an original or a copy?

14 A This is an original.

15 MR. SORKIN: Your Honor, we offer 58-A in  
16 evidence.

17 MR. GOULD: Do you have copies for us?

18 MR. SORKIN: You have copies of everything. You  
19 Xeroxed everything.

20 MR. GOULD: Would your Honor just bear with us  
21 for one moment.

22 (Pause.)

23 MR. GOULD: May I just ask him a question  
24 about it, your Honor?

25 THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. GOULD:

Q Where is the rest of the account?

A Mr. Sorkin has the entire account.

Q It is more than one page, isn't it?

A There was a folder that thick.

Q You didn't just pick up one page of this account ending on September 25, 1968, did you?

A No, I picked up all the documents.

Q And you delivered the whole thing to Mr. Sorkin?

A Yes.

Q So this page has been taken off the package that you delivered to Mr. Sorkin?

A They weren't clipped together. They were all loose.

Q Separate pages?

A Yes, in a box.

MR. GOULD: No objection.

(Government's Exhibit 58-A for identification received in evidence.)

BY MR. GOULD:

Q Does Mr. Sorkin still have those pages?

A He has them.

MR. GOULD: Thank you very much.

MR. FELDSHUB: Same ruling, your Honor?

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Bonavia-direct

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2 THE COURT: Yes, indeed, Mr. Feldshuh.

3 THE COURT: May I ask you, Mr. Bonavia, is this  
4 a statement in your Barbin account or in the full disclosure  
5 account, if you know?

6 THE WITNESS: No, sir. This is the Barbin account,  
7 4318. Full disclosure did not have a number.

8 THE COURT: I see. 4318.

9 THE WITNESS: 4318.

10 THE COURT: That was the number at Barbin?

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you, sir.

13 BY MR. SORKIN:

14 Q Mr. Bonavia, let me show you now what has previously,  
15 been marked as Government's Exhibit 58-B and 58-C.

16 Would you look at 58-C and 58-B, Mr. Bonavia,  
17 and tell us, please, what those documents are?

18 A These are exact copies of the documents showing  
19 the transfer of \$32,500 from my account to Mr. Philip  
20 Stoller and \$32,500 to Mrs. Janice Allen.

21 Q Mr. Bonavia, is this an exact copy of the  
22 document you picked up from the bank in March of '72?

23 A Yes, it is.

24 MR. SORKIN: Your Honor, we offer 58-B and 58-C  
25 in evidence.

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2 MR. GOULD: I don't really have any objection  
3 to it. I don't know why we need them. There is no issue.  
4 I'm ready to concede that he paid \$32,500 from the  
5 statement.

6 I have no objection.

7 (Government's Exhibit 58-B and C received  
8 in evidence.)

xx

9 Q Mr. Bonavia, was this a cash transaction?

10 A No, sir. I signed authorization in New York at  
11 East 60th Street and Mr. Stoller and Mr. Allen, they either  
12 took them to Zurich or mailed them and had the money trans-  
13 ferred to their accounts.

14 Q You picked these up in 1972; is that correct?

15 A That is correct.

16 Q Mr. Bonavia, let's go on.

17 Did there come a time, Mr. Bonavia, where you  
18 had a conversation with Mr. Stoller and the name Shirley  
19 came up in the conversation?

20 A That came up many times from 1967 through 1970.

21 Q How often?

22 A Oh, nearly every time I was here and I probably  
23 came to New York at least once every three weeks.

24 Q Tell us please what was said by Mr. Stoller and  
25 by you?

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2 MR. GOULD: I would like to get a date of each  
3 conversation, your Honor, and place and who was present.

4 MR. SORKIN: I will try to pin it down, your Honor.

5 Q How many conversations between '67 and '70 did  
6 you have with Mr. Stoller where the name Shirley came up?

7 A At least 100 conversations.

8 Q In person or by phone or what?

9 A Both.

10 Q When they were in person, do you recall who was  
11 present at these conversations?

12 A Sometimes Mr. Allen would be present, sometimes  
13 he was not.

14 Q Tell us, please, what Mr. Stoller said in these  
15 conversations and what you said?

16 A Well, the account Shirley was openly discussed  
17 as his account. He always had a copy of the account  
18 in his pocket and would show me how well it was doing and  
19 would mention that some consulting fees or some cash had  
20 been brought over to him that would have been in addition  
21 to the account had he not taken it out.

22 Only once did he let me handle the account.  
23 He was -- I was going to Kennedy Airport and he offered  
24 to dop me off since he lived that way. He took an  
25 account Shirley out of his pocket and said, "I want you



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2 to see how account Shirley is doing."

3 I held it and looked at it and said it was doing  
4 very well.

5 Q Mr. Bonavia, did there come a time in conversation  
6 with Mr. Allen where the name Erika came up?

7 A Yes, sir.

8 Q During what period, sir?

9 A 1967 to 1970.

10 Q How many times?

11 A Same number of times. Every time I was here, at  
12 least once every three weeks.

13 Q What about by phone?

14 A Plus phone calls.

15 Q Tell us please, when you saw Mr. Allen, if anyone  
16 else was present?

17 A Mr. Stoller was present.

18 Q Anyone else at times?

19 A At various times Mr. Joe Arden would be present.

20 Q Tell us please what Mr. Allen said with respect  
21 to Erika?

22 A He openly discussed account Erika as his account  
23 and how it was doing and would show it to me. He always  
24 had copies of the account and always discussed account  
25 Erika. There was times he would show me that it was

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2 very low because he had taken consulting fees out of it  
3 because he needed it for living expenses.

4 Q Have you ever heard of a Lichtenstein trust?

5 A Yes, sir.

6 Q Did that ever come up in conversation with Mr.  
7 Stoller and Mr. Allen?

8 A Yes.

9 Q Do you recall when you first heard it from their  
10 lips?

11 A In 1967.

12

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2 Q Was it discussed later on, after '67?

3 A Yes. It was discussed later on. At a later date,  
4 Mr. Stoller told me that --

5 Q When was the later date?

6 A Probably in 1969 or '70.

7 O Tell us, please, what he said.

8 MR. GOULD: Just a minute, your Honor. May we  
9 just have a second before he responds?

10 I am going to object as immaterial and irrelevant.

11 THE COURT: I am hoping that we are getting into  
12 something relevant, Mr. Sorkin.

13 MR. SORKIN: We are, your Honor, and I think  
14 through Mr. Gould, Exhibit G in evidence, he introduced  
15 the --

16 THE COURT: I'm not so sure about that but go  
17 ahead and we will see what happened.

18 Q Go ahead, Mr. Bonavia.

19 A Mr. Stoller encouraged me to open up a Lichtenstein  
20 trust.

21 MR. GOULD: Your Honor, let's get some words.

22 Q Tell us what he said on the conversation that  
23 you had?

24 A He gave me the advantages of it, that the Lichten-  
25 stein trust would hold a secret account rather than holding

2 it in his own name, and he told me that he went to Lichten-  
3 stein and formed a trust through a friend of Mr. Fred  
4 Herbert, an attorney, and Lichtenstein specialized in this.

5 MR. GOULD: I move to strike it as immaterial and  
6 irrelevant. I have Exhibit G in front of me.

7 THE COURT: You are wasting your time. I have  
8 already told you and Mr. Sorkin, I am not sure that  
9 Exhibit G opened the door to this at all. I quite agree  
10 with you. Let's go on.

11 MR. GOULD: It has nothing to do with it.

12 THE COURT: I didn't assume it did when I made  
13 my ruling. I am taking it on his representation that we  
14 will get to the point shortly and --

15 MR. GOULD: I think he better tell us now why he  
16 is doing it.

17 MR. SORKIN: I will be happy to tell him.

18 THE COURT: This is all very fine but I meant  
19 what I said when I said what I said and we are going to do  
20 it that way and I --

21 MR. GOULD: Your Honor, are you receiving it sub-  
22 ject to a motion to strike.

23 THE COURT: Yes, I am. Mr. Sorkin, proceed  
24 with dispatch.

25 MR. SORKIN: Yes, your Honor.

2 Q Mr. Bonavia, let me direct your attention to the  
3 fall of 1968. Did you have a conversation with Mr. Stoller?

4 A Yes.

5 Q Where was the conversation?

6 A In the East 60th Street office.

7 Q Was anyone else present?

8 A Mr. Allen was present.

9 Q Anyone else, sir?

10 A No, sir.

11 Q Tell us, please, what was said?

12 A He told me that he had a stock promotion coming  
13 up, that he had met another stock promoter. He said he  
14 considered himself the best stock promoter in New York but  
15 he had met a man by the name of Ramon D'Onofrio and he  
16 said that this man is probably nearly as good as I am at  
17 running a stock.

18 He said, however, he wants me to run the stock  
19 for him and he said it is a very clean stock, it is a stock,  
20 the nature of its business is to employ the hard core un-  
21 employed to train the hard core unemployed, and he said  
22 the SEC or the United States Government could never attack  
23 it because to attack that would be like speaking ill  
24 of country and motherhood.

25 Q Did he mention the name?

2 A He mentioned Training With The Pros.

3 Q Was there any further conversation that you recall?

4 A He said he was going to do a real job on this  
5 one. It would be the promotion job of his life. He said  
6 he could run it to 100, split it several times and run it  
7 back to 100 again.

8 Q Let me direct your attention to January. Did you  
9 meet Mr. Stoller again and discuss Training With The Pros?

10 A Yes, sir, I did.

11 Q Tell us, please, where the conversation was held?

12 A It was first held at East 60th Street.

13 Q Who was present?

14 A Mr. Allen.

15 Q Was anyone else present?

16 A No.

17 THE COURT: I ma confused. Do you mean by that  
18 this is Allen and you alone or Allen, Stoller --

19 THE WITNESS: Stoller, Allen and myself. I  
20 believe Mr. Arden was ill at the time.

21 Q Tell us please what was said by Mr. Stoller,  
22 Mr. Allen and you?

23 A Mr. Stoller said, and Allen agreed that Training  
24 With The Pros had signed a 25 million dollar contract  
25 with McGraw-Hill, and Mr. Stoller went on to explain that

2 a company with the reputation that McGraw-Hill has  
3 signing a contract with Training With The Pros was like  
4 giving it a blessing, that it could never be questioned;  
5 they were on their way to make a great number of contracts  
6 in addition to the 25 million dollar contract.

7 Q Was there any further conversation at this meeting?

8 A We went from there to --

9 Q Just listen to my question.

10 At this particular meeting was there any further  
11 conversation?

12 A He asked me to buy stock, that it was going to go  
13 public.

14 Q Anything else that you recall?

15 A No, I don't recall anything at that meeting.

16 Q After this conversation, where did you go?

17 A We went to Mr. D'Onofrio's office.

18 Q Who is "we"?

19 A Mr. Stoller, Mr. Allen and myself.

20 Q Was anyone else there?

21 MR. GOULD: Can we get the date? Is it the same  
22 day?

23 Q Tell us the date, Mr. Bonavia, as best you can  
24 recall?

25 A The best I can say, it was in the first half of  
January.

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Bonavia-direct

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2 Q Did you have a conversation with Mr. D'Onofrio,  
3 Mr. Stoller and Mr. Allen, at Mr. D'Onofrio's office?

4 A Yes.

5 Q Tell us, please, what was said and by whom?

6 A Mr. Stoller repeated again, the 25 million dollar  
7 contract with McGraw Hill and this stock could not  
8 be attacked by the SEC because of the nature of its  
9 business and he wanted me to see the company.

10 Q Anything else?

11 A Not that I recall.

12 Q Did you go any place afterwards?

13 A Yes, sir. We went to West 86th Street to the  
14 Cameo Hotel where Training With The Pros had their offices.

15 Q Did you meet anyone there?

16 A We went in, there was a lady sitting at a desk  
17 and Mr. Stoller said that we had an appointment with  
18 Mr. Bud Moss, and Mr. Moss came out to meet us, to greet  
19 us.

20 Q Did you have a conversation with Mr. Moss?

21 A Yes.

22 Q Tell us --

23 MR. GOULD: Can we ascertain who was present  
24 at that conversation?

25 Q Who do you recall being there?



2 A I recall myself, Mr. Allen, Mr. Stoller, Mr.  
3 Moss and a young lady that was sitting at the desk.

4 Q When you had the conversation with Mr. Moss,  
5 who was present?

6 A Mr. Allen and Mr. Stoller and myself.

7 Q Was the young lady there?

8 A No, I don't recall that she came in the back room.

9 Q Tell us, please, what was said?

10 A Mr. Stoller explained how people were trained  
11 on this. There was a paper mache mockup of an automobile  
12 engine and lights would light in various places when things  
13 weren't wired right. I didn't understand it since I  
14 am not a mechanic. He tried to explain the mockup of  
15 a brake system of an automobile. Then Mr. Moss took over  
16 and said, "Phil, you don't understand it, let me explain  
17 it."

18 And, he explained how people could be trained  
19 to repair either a brake system or tune an automobile  
20 engine in less than six hours: trained and qualified to do  
21 this work in less than six hours.

22 Then we went down and sat at Mr. Moss' desk. Mr.  
23 Stoller kept talking of the 25 million dollar contract  
24 and I noticed that Mr. Moss never did confirm that, and  
25 Mr. Stoller said, "Bud, we have a 25 million dollar contract

with McGraw-Hill, isn't that right, and we will be unlimited from here on."

Mr. Moss became irritated and said, "Now look, you guys come on awfully strong," and then Mr. Stoller and Mr. Allen got up, we were ready to leave, and said, "Well, we have accomplished everything here," and left.

Q Where did you go?

A Back to East 60th Street.

Q Did you have a conversation with Mr. Allen and Mr. Stoller there?

A Yes.

Q Was anyone else present?

A No.

Q Tell us, please, what was said and by whom?

A It was discussed, the 25 million dollar contract and all of the automobile manufacturers were interested in it, all the oil companies for gasoline stations, and what a terrific stock this was and really an easy one to run.

Q After this conversation did you go back and see Mr. Moss?

A I went back, but Mr. Stoller and Mr. Allen didn't know I went back.

Q Let's forget that they knew. Were they with you when you went back?

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Bonavia-direct

1512a

2 A No, sir. I took a cab and went back.

3 Q Did you have a conversation with Mr. Moss?

4 A Yes. I went to his desk and --

5 MR. GOULD: May we have a date, and who was  
6 present, your Honor?

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Q Tell us who --

A It was the same day, the first half of January.

Q Was anyone else present other than you and Mr. Moss?

A No, sir.

Q Tell us, please, what was said.

A I told Mr. Moss the reason that I came back, I wanted to know if there was a \$25 million contract because I noticed in the previous conversation, he had never confirmed that.

Mr. Moss said there is not a contract with McGraw-Hill, and I said, "Do you have any contracts?" And he said, "No." He said, "We are talking with Shell Oil, but we don't know if we are going to get a contract."

He did say, "We think we have a terrific thing here, but we haven't been able to sell it."

Q Was there any further conversation which you recall?

A I said I am not going to buy the stock and Mr. Moss said, "Well, at this point I don't blame you."

Q After this conversation with Mr. Moss, what did you do?

A I went back to East 60th Street. I didn't tell Mr. Stoller that I had been to see Mr. Moss, but I told him I definitely didn't want the stock. He asked me why and I said, "You referred to a lot of promotions of running the

1 hpb-2

Bonavia-direct

2 stock and I would rather stay out."

3 Q Did there come a time when you went to Switzerland  
4 after this meeting?

5 A Yes, sir.

6 Q When was that, sir?

7 A It was in February 1969.

8 Q Prior to your going to Switzerland, Mr. Bonavia,  
9 did you have a conversation with Mr. Allen?

10 A Yes, sir.

11 Q What did you say and what did he say and was anyone  
12 else present?

13 A Mr. Allen --

14 Q Slow down. Where was the conversation?

15 A It was at East 60th Street.

16 Q Was anyone else present?

17 A No, sir, just Mr. Allen.

18 Q Tell us, please, what Mr. Allen said. Please  
19 keep your voice up.

20 A Mr. Allen said he wanted to wait and talk to me  
21 until Mr. Stoller left. Mr. Stoller left quite away, some-  
22 where, and left earlier than Allen did. Allen said, "You are  
23 my oldest client, you've been with me since 1959, and I hate  
24 to see you get jerked around," and he said, "Mr. Stoller  
25 plans to put Training With the Pros in your account."



1           Q     Now, let me direct your attention to March  
2  
3 of 1969. Did you have a conversation with Mr. Stoller with  
4 respect to Training With the Pros, after the trip to Switzer-  
5 land?

6           A     I am sure I had a conversation with him in March.  
7 But, I didn't tell him at the time --

8           Q     No, just listen to the question. Did you have  
9 a conversation with Mr. Stoller?

10          A     I was here every month. I don't recall each  
11 conversation.

12          Q     When was the next time you saw Mr. Stoller after  
13 going to Switzerland and Training With the Pros came up  
14 in conversation?

15          A     In March, and he --

16          Q     Where?

17          A     East 60th Street.

18          Q     Was anyone else present?

19          A     Mr. Allen was present.

20          Q     Anyone else?

21          A     Mr. Arden may have been there. I don't know.

22          Q     Tell us, please, what was said.

23          A     Mr. Stoller said there had definitely been a  
24 contract signed with McGraw-Hill, and they had some other  
25 contracts. He said the company was really on its way.

1 Frankly, he had me convinced they did have a  
2 contract with McGraw-Hill. He didn't know that --

3 Q Don't think for him. Just tell us what he said.

4 A He said that the contract came a little later  
5 than he expected it, but we now had the contract, that  
6 the contract was signed, and I questioned him on it, if it  
7 was just an intent or if it was a binding contract.  
8

9 He said, "It is a binding contract for \$25 million."

10 Q Go ahead.

11 A And, he said, "You could imagine how fast other  
12 companies will rush in to place orders after McGraw-Hill  
13 has placed a contract at that figure."

14 Q What did you say, if anything?

15 A I didn't say anything then. I wanted to think  
16 it over.

17 Q What did you do then?

18 A I left.

19 Q Where did you go?

20 A I went to my hotel and then I decided to go see  
21 Mr. Moss the second time.

22 Q Did you go see Mr. Moss?

23 A Yes.

24 Q Did you have a conversation with him?

25 A Yes.



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Q What did he say to you and what did you say to him and was anyone else present?

A I asked him again. I said, "Is there a \$25 million contract signed with McGraw-Hill?"

And he said, "We do not have a contract with McGraw-Hill."

I said, "Do you have any other contracts?" And he said no.

MR. GOULD: I am confused now about the date. I don't think counsel elicited any kind of date.

Q What was the date of --

A In early March.

Q Of 1969?

A Yes.

Q Mr. Bonavia, what was the conversation you had with Mr. Moss?

A I asked him if there was a \$25 million contract with McGraw Hill, and he said "I wish I could tell you yes, but there isn't a contract with McGraw Hill."

THE COURT: We will take the morning recess at this point, ladies and gentlemen. Ten minutes.

(Recess.)

End 5B

1 THE COURT: Mr. Sorkin.

2  
3 Q I believe I asked you, Mr. Bonavia, about the  
4 conversation in early March with Mr. Moss.

5 THE COURT: He has just told us Mr. Moss again  
6 said there was no contract.

7 MR. GOULD: Your Honor, I didn't hear it as  
8 early March, I just heard it as March.

9 THE COURT: I don't want to get into any argument.  
10 That is not my point. I simply said that the last answer  
11 was that he said when he went up and saw Mr. Moss for the  
12 second time, Moss told him there was no contract with  
13 McGraw-Hill.

14 Next question.

15 Q Would you tell us when that was, Mr. Bonavia?

16 A That was in the first half of March of 1969.  
17 It was in early March.

18 Q After the conversation with Mr. Moss, where did  
19 you go?

20 A I went back to East 60th Street office of Stoller  
21 and Allen.

22 Q Did you have a conversation with Mr. Stoller and  
23 Mr. Allen?

24 A Yes. I told Mr. --

25 Q Stop. Who else was present if anyone?

1 gab-2

Bonavia-direct

2 A Mr. Arden may have been present, but I don't  
3 recall him being there. Mr. Allen was there.

4 Q Tell us, please, what the conversation was.

5 A I told Mr. Stoller that I did not want to buy  
6 the stock and he said, "What changed your mind? You seemed  
7 clearly sold on it this morning."

8 I said, "I went to see Mr. Moss and Mr. Moss told  
9 me that there had not been a \$25 million contract signed  
10 and they didn't have a contract with anyone else."

11 I said, "Phil, you lied to me."

12 He turned to Mr. Allen and said, "I am going to  
13 see Ray D'Onofrio and I'm going to have Moss removed as  
14 president."

15 He said, "If I am going to be promoter of this  
16 stock, I can't have this man talking to a prospective investor  
17 that way."

18 I said, "Phil, there is no \$25 million contract."

19 He said, "The least that Mr. Moss could have done  
20 if he didn't want to tell you there was a contract, he could  
21 have gone to the back room and told the girl to tell you he  
22 wasn't in."

23 I said, "Mr. Moss didn't do that, he talked to me."

24 Q Tell us what else he said, if anything.

25 A Then he said he was glad that I didn't buy any of

1 the issue when the stock went public, that he took it and he  
2 had it hidden in foreign corporations and in his mother-in-  
3 law's names, his mother's name, his wife's name and various  
4 friends' names, and he said, "I have taken care of that,  
5 so no \$200 a week U.S. Attorney or \$200 a week SEC man will  
6 ever catch me."

8 Q Was there any further conversation?

9 A Yes. He then asked me if Herbert had talked to  
10 me about turning the stock of my closely held corporation --

11 Q Let's confine ourselves to Training With the Pros.  
12 Anything else on Training With the Pros?

13 A He repeated that I would be very sorry, that this  
14 stock would make a million, and he said if I would buy the  
15 stock, he could run it to 100 and split it and over again.

16 He said, "What do you care what Moss said?"

17 I said, "I care a lot, it means a lot to me."

18 He said, "I can make you a million dollars."

19 I said, "I don't want the stock."

20 Q Did there come a time, Mr. Bonavia, where in Mr.  
21 Stoller's presence or Mr. Allen's presence you heard the  
22 name Pompeii?

23 MR. FELDSHUH: Who?

24 MR. SORKIN: Pompeii.

25 A Yes, I heard that many times.

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Q When did you first hear --

A 1967 through 1970.

Q Where did you hear it?

A In Mr.Stoller's office, in various hotels where I would stay. They might come for dinner, a meeting at the hotel where I was at.

Q Do you know a man by the name of Muir Weissinger?

A Yes, sir.

Q Did you meet Mr. Weissinger in Mr. Stoller's presence during this period of time?

A Yes, sir.

Q Did you have a conversation with Mr. Weissinger?

A Yes, sir.

Q In Mr.Stoller's or Mr. Allen's presence?

A Yes, sir.

Q How many times did you meet Mr. Weissinger?

A Oh, I am sure I met Mr.Weissinger 50 or 70 times.

Q Where is this?

A I met him first at Rubin, Rose in 1960.

Q Who mentioned Pompeii to you in these conversations?

A Pompeii was openly discussed by Muir Weissinger, PhilipS toller and Jerome Allen as being Mr. Weissinger's secret account with Bank Hofmann.

Q Let me direct your attention, Mr. Bonavia, to

approximately May 1, 1969.

Did you go to Switzerland?

A Yes, sir.

Q Did you meet with anyone?

A I met with Mr. Herbert.

Q Where did you meet with him, sir?

A At Bank Hofmann.

Q Was anyone else present?

A No, sir.

Q Did you have a conversation with him?

A Yes, sir.

Q What did you say to him and what did he say to you?

A I told him that I had information that Training With the Pros had been placed in my account.

Q Stop.

MR. GOULD: Wait a minute.

Q Prior to your going over to Switzerland, did you have a conversation with Mr. Allen?

A Yes, sir.

Q What did Mr. Allen say?

A Mr. Allen told me that Training With the Pros had been placed in my account and he said, "You are my oldest friend and client, and I don't like it," and he said, "Regardless of what Stoller tells you or Herbert tells you,

1 gab-6

Bonavia-direct

2 there is Training With the Pros in your account and I would  
3 go back to Switzerland if I were you and get an attorney."

4 Q Did you then go back to Switzerland on May 1st?

5 A Yes, I did.

6 Q Did you have that conversation with Mr. Herbert?

7 A Yes.

8 Q Tell us, please, what you said to Mr. Herbert  
9 and what Mr. Herbert said to you.

10 A I told him I had information that Training With the  
11 Pros had been placed in my account and he denied it.

12 He said, "There isn't any Training With the Pros in  
13 your account."

14 He said, "You have instructed me before to ignore  
15 my authorization from anyone and I will do that."

16 He said "There is not Training With the Pros in  
17 your account."

18 We went across the street, had a cup of coffee  
19 and he asked me if I was interested in turning over to  
20 Bank Hofmann --

21 Q Does this concern Training With the Pros?

22 A No, sir.

23 Q Let's not go into that.

24 Mr. Bonavia, let me direct your attention to  
25 approximately the end of May 1969. Did you go to Switzerland



1 gab-7

Bonavia-direct

1525

2 then?

3 A Yes, I did.

4 Q Did you see anyone there?

5 A I saw Mr. Herbert.

6 Q Did you have a conversation with him there?

7 A Yes, sir.

8 Q Where was the conversation held?

9 A It was outside of the bank, the sidewalk.

10 MR. GOULD: Excuse me. I am confused again.

11 I thought he was testifying. Are there two May  
12 conversations?

13 MR. SORKIN: Yes.

14 MR. GOULD: He better get some dates.

15 MR. SORKIN: I thought it was clear.

16 Q Did you go to Switzerland on or about May 1st --

17 THE COURT: We covered that. Let's go on to the  
18 late May conversation.

19 MR. SORKIN: I am sorry, your Honor.

20 Q Did you have a conversation with Mr. Herbert in  
21 late May on the sidewalk?

22 A Yes. He called me outside and we talked outside  
23 on the sidewalk.

24 Q Was anyone else present?

25 A No, sir.



1 gab-8

Bonavia-direct

2 Q Tell us, please, what was said.

3 A I told him that I was of the opinion Training  
4 With the Pros was in my account and I wanted to see my  
5 account. I had never been permitted to see my secret account.

6 He said that Stoller was a crook, Stoller would  
7 probably cost him the job of being president of Bank Hofmann  
8 through Training With the Pros.

9 This was causing so much trouble. He said that  
10 9100 shares had been placed in my account by Mr. Stoller.

11 I asked him where the stock came from.

12 He said from various customers and people that  
13 Stoller knew.

14 I said, "I want a copy of my account."

15 He said, "I will give you a copy of your account."

16 He says, "I know why you want it. You want to  
17 turn it over to the U. S. authorities."

18 I said, "Yes, I do. I don't have anything to  
19 turn over. I can't prove I have an account."

20 He said, "Come in and sign this paper and it will  
21 take a week to ten days to get everything together, but  
22 I will mail it to you and I want you to take it to the U.S.  
23 Attorneys."

24 I signed the paper. However, I did not get the  
25 documents from my secret account.

gab-9

Bonavia-direct

1 gab-9 Bonavia-direct 1527  
2 Q Let me show you, Mr. Bonavia, what has previously  
3 been marked as Government Exhibit 65A through 65H. Why  
4 don't you start looking at, Mr. Bonavia, 65A through 65F  
5 and I will get the rest of the documents.

6 MR. GOULD: Could we see what you have shown the  
7 witness?

8 MR. SORKIN: I certainly will. Just let me pull  
9 them out.

10 (Pause.)

11 Q Here is G and H.

12 THE COURT: So that we can be clear on this, Mr.  
13 Sorkin, are we to understand that you are showing the witness  
14 Government Exhibits 65A to and including 65H?

15 MR. SORKIN: Yes, your Honor.

16 THE COURT: You are sure of that?

17 MR. SORKIN: Yes, your Honor.

18 THE COURT: All right.

19 Q Mr. Bonavia, have you look at 65A through and includ  
20 ing H?

21 A Yes.

22 Q Tellus, please, just what they are.

23 A They are purchase slips, copies of purchase slips  
24 where Training With the Pros was put into my account. I  
25 didn't add the total number.

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Q Stop, stop. Don't tell us anything further.

Where did you get these?

A Bank Hofmann.

Q When?

A March 1972.

Q Are these, Mr. Bonavia, exact copies of the documents you picked up?

A Yes, they are.

MR. SORKIN: Your Honor, we offer 65A through H.

MR. GOULD: Just a minute.

I would like to ask him some questions about it, your Honor. I will be very brief, I promise.

VOIR DIRE EXAMINATION

BY MR. GOULD:

Q Are these the only papers that you picked up on the Training With the Pros account?

A I got a folder of papers from Bank Hofmann. If they gave me all of the papers or not, I would have no way of knowing. This was the first time I ever saw anything from the secret account. I got them through an attorney in Switzerland.

Q Mr. Bonavia, these papers that you have just identified cover a period in March of 1969. Wasn't there other trading in the stock in your accounts of Training With the

1 gab-11

Bonavia-direct

2 Pros?

3 A Yes, there were 500 shares that I didn't know  
4 about, that I can explain.

5 Q No, I don't mean that. After 1969 didn't you  
6 trade in the stock?

7 A There were 500 shares traded that I didn't know  
8 about, and there was authorization for 10,000 shares that  
9 they were going to reimburse my funds through.

10 Q All I want to know now, Mr. Bonavia, didn't you  
11 get some other papers from them showing transactions in  
12 Training With the Pros?

13 A Yes.

14 Q But they are not in this group that you have just  
15 identified?

16 A No, they are not in that group there, purchase  
17 slips.

18 Q You turned those over to Mr. Sorkin?

19 A Yes, sir.

20 Q But not included in this batch of Government  
21 Exhibit 65A to H?

22 A No, sir.

23 MR. GOULD: That is all.

24 I have no objection.

25 MR. FELDSHUH: Subject to connection, your Honor.

1 gab-12

Bonavia-direct

2 THE COURT: Yes, as to your client, correct.

xxx

3 (Government Exhibits 65A through 65H for  
4 identification, received in evidence.)

5 BY MR. SORKIN:

6 Q Mr. Bonavia, after your conversation with Mr. Herbert  
7 did you then come back to New York?

8 A Yes, I did.

9 Q Did you have a conversation with Mr. Stoller?

10 A Yes, sir, I did.

11 MR. SORKIN: Your Honor, I just want a moment to  
12 take just one of these.

13 May I read it to the jury, your Honor?

14 THE COURT: Yes.

15 (Mr. Sorkin read from Government Exhibit 65A  
16 in evidence to the jury.)

17 MR. GOULD: There is no issue on this, your Honor.  
18 I don't know why we have to go into this detail about it.

19 MR. SORKIN: I am almost through, your Honor.

20 THE COURT: If the Government lawyer wants to  
21 do it, it is his right.

22 Go ahead.

23 MR. GOULD: Let's not talk about wasting time.

24 This is sheer waste, your Honor. There is no issue on this.

25 We know the shares were bought.

1 gab-13

Bonavia-direct

2 MR. SORKIN: Will counsel stipulate that the total  
3 purchase price was approximately \$450,000?

4 MR. GOULD: Whatever you say it was, whatever the  
5 adding machine comes up with, that is the total.

6 MR. SORKIN: Very well.

7 MR. GOULD: We are not going to get it by what you  
8 were doing.

9 THE COURT: Gentlemen, please. Let's be clear  
10 about this.

11 You are stipulating what?

12 MR. GOULD: I am prepared to stipulate, your Honor,  
13 that there went into Account 4318, which he has identified  
14 as his account at the Bank Hofmann -- there went in the  
15 aggregate of -- how many shares?

16 MR. SORKIN: 9100 shares.

17 MR. GOULD: 9100 shares, and that the aggregate  
18 purchase price thereof was 400 --

19 MR. SORKIN: \$449,000 and change.

20 MR. GOULD: \$449,000 and some change, American  
21 dollars.

22 MR. SORKIN: That's correct.

23 Q You said you had a conversation with Mr. Stoller  
24 when you returned. Where was the conversation?

25 A East 60th Street.

gab-14

Bonavia-direct

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Q Was anyone else present?

3

A No, he was alone.

4

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Q You don't know if he was alone or was anyone else present?

6

A I am sure he was alone.

7

8

Q What did you say to him and what did he say to you?

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A I told him that I knew that Training With the Pros was in my account, he had put 9100 shares in my account. I had reason to believe --

12

Q Keep your voice up.

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A I told him I had reason to believe that the stock came from him. He then admitted that the stock had been placed in my account. He said, "The trouble with you" -- he quite often called me. He says, "You are a typical stupid wop."

18

19

He said, "If you will listen to me, I can make you a million in this stock."

20

21

He said, "For \$40,000 I can buy market letters," and he mentioned Gould's position in Value Line.

22

23

MR. SORKIN: I will represent that the Gould's position is in no way related to Mr. Gould.

24

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MR. GOULD: How can he possibly know that?

MR. SORKIN: Unless he wants to admit to it, your

1 gab-15

Bonavia-direct

2 Honor.

3 MR. FELDSHUH: I will take that subject to  
4 connection, your Honor.

5 Q What else did he say, Mr. Bonavia?

6 A Gould's position in Value Line. He said he could  
7 get a man by the name of Brad Thurlow to do a writeup on this  
8 stock and he referred to Mr. Allen in a derogatory remark which  
9 I hate to use.

10 Q Just tell us the conversation.

11 A Do you want me to say the word? It is a four-  
12 letter word.

13 Q I just want you to tell us the conversation.

14 A He turned to Mr. Allen and in a term he always  
15 used for Mr. Allen, he said, "If that fat fuck" --

16 MR. GOULD: I thought Mr. Allen wasn't there.  
17 I better change my notes.

18 MR. SORKIN: I thought he said he referred --

19 THE COURT: Gentlemen, please. You may have mis-  
20 heard this.

21 Would you allow the witness to finish and you may  
22 understand the situation without your talking.

23 MR. GOULD: I heard the words he turned to Mr.  
24 Allen --

25 THE COURT: I heard the words too. I have the



1 gab- 16

Bonavia-direct

2 advantage of being considerably closer than you and Mr.  
3 Sorkin. That is my point.

4 Just listen and wait. All of this will come to  
5 the surface.

6 MR. GOULD: I am sorry, your Honor.

7 THE COURT: You were interrupted, Mr. Bonavia.  
8 You go ahead.

9 A He used Mr. Allen's name and he referred to Mr.  
10 Allen and said, "If that fat so and so will use his influence  
11 with Baron's Magazine and Wall Street Journal --he has  
12 friends down there where he can plan a story that will run  
13 this stock and make you a million dollars."

14 He said, "I need \$40,000 to pay these market  
15 letters."

16 I said, "You take the stock out of my account  
17 that shouldn't have been in there. You pay the \$40,000  
18 and you make yourself a million dollars. I don't want it."

19 Q Mr. Bonavia, let me direct your attention to the  
20 fall of 1969. Did there come a time when you received a  
21 subpoena from a grand jury?

22 A Yes, sir.

23 Q Could you give us a better date when you received  
24 this subpoena?

25 A I don't know the exact date of the subpoena. It

gab-17 Bonavia-direct

was in December of 1969.

Q You don't have a better date?

A No, I don't.

Q Prior to receiving this subpoena did you get a telephone call from Mr. Stoller?

A Yes, sir.

Q Tell us, please, what Mr. Stoller said to you and what you said to Mr. Stoller?

A He said, "Did you get a subpoena?" I had not gotten a subpoena at that time.

He said, "You are going to get one."

He said, "When you get it, I want to talk to you."

He said, "I can be helpful to you."

I got the subpoena later that day in the mail.

Q What did you do then?

A I came to New York.

Q Did you meet Mr. Stoller?

A I met with Mr. Stoller.

Q Where?

A He was alone in East 60th Street.

Q Tell us, please, did you have a conversation with him?

A Yes. He said this subpoena probably had to do with --

1 gab-18 Bonavia-direct 1536  
2 Q Don't mention any other names. Just tell us  
3 what you said.

4 A He indicated what the subpoena was about. He  
5 retraced his own life, that he started working for Merrill  
6 Lynch for peanuts and he had worked hard and had what he  
7 had. He says, "You have seen account Shirley."

8 He said, "I have worked hard for it and I am getting  
9 too old to see that destroyed and you are not going to destroy  
10 me by going before that grand jury."

11 He said, "My life is at stake so I will place your  
12 life at stake."

13 He said, "You are not to go in there and use my  
14 name on any stocks I have recommended, on any clients that you  
15 know that we have at Bank Hofmann. You are to know nothing  
16 about Bank Hofmann. You are to know nothing about Training  
17 With the Pros. You are to know nothing about Shattuck" --

18 MR. GOULD: If your Honor please --

19 MR. SORKIN: I am sorry. I asked him to delete  
20 that. I am sorry, your Honor.

21 THE COURT: Nothing about Training With the Pros.  
22 We will accept that and disregard the rest.

23 Q Tell us, please, the rest of the conversation,  
24 Mr. Bonavia.

25 A He told me if I didn't testify in the manner

1 gab-19

Bonavia-direct

2 that he had instructed me, that I wouldn't leave New York  
3 alive.

4 MR. GOULD: What was that last?

5 Q No one heard you here, Mr. Bonavia.

6 A He said if I didn't testify in the manner that he  
7 had instructed me, I would not leave New York alive.

8 Q Did he say anything else to you?

9 A He told me that Ramon D'Onofrio was a killer.

10 I said, "Phil, you have told me that at least a dozen  
11 times."

12 He says, "Well, believe me, he is a killer."

13 He said, "Ray D'Onofrio can make a phone call and  
14 have you taken care of before you ever get to the courthouse."  
15 He said, "If you know Ray D'Onofrio like I do, you would know  
16 what I mean."

17 Q Anything else that you can recall?

18 A Well, either that conversation or the following  
19 one -- there were two conversations before I testified -- he  
20 called Martin Frank on the telephone.

21 Q Let's go to the next conversation with Mr. Stoller.

22 When was that?

23 MR. GOULD: Have we exhausted this conversation?

24 MR. BORKIN: I think he said he didn't recall  
25 whether it was this one or the next one.

1 gab-20

Bonavia-direct

2 Q Was there any further conversation this first  
3 time, Mr. Bonavia?

4 A We are before I testified?

5 Q The first time you met Mr. Stoller, the conversa-  
6 tion you just talked about.

7 A Other than I was to testify as he said, or he would  
8 see to it that Ray D'Onofrio took care of me. He said he  
9 talked to Ray D'Onofrio about it.

10 Q Anything further than that at this conversation?

11 A He suggested that I take the Fifth Amendment. I  
12 said I didn't want to take the Fifth Amendment.

13 Q Anything else that you recall?

14 A No, not that I recall.

15 Q When did you next speak to Mr. Stoller about the sub-  
16 poena?

17 A It was a day before or the morning before I testi-  
18 fied.

19 Q Where did you speak to him?

20 A In his office, East 60th Street.

21 Q Was anyone else present?

22 A No, sir.

23 Q Tell us, please, what he said to you?

24 A He had called me and said that he had been a  
25

1 gab-21

Bonavia-direct

2 little rough with me on the previous meeting, but he wanted  
3 to be helpful to me and if I would stop in.

4 I talked to him and he told me the same thing  
5 that he told me before --

6 Q Tell us what he said.

7 A That Mr. D'Onofrio would take care of me if I  
8 mentioned Training With the Pros, anything about any Swiss  
9 bank accounts or any of their business.

10 Q Anything else that you can recall that he said?

11 A He asked me to take the Fifth Amendment and play  
12 dumb on everything. He said, "If they ask you, you don't  
13 remember."

14 End 6A

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1 6b am gwrf 1 Bonavia-direct

2 Q You mentioned that at either the first conversation  
3 or this one he called Mr. Frank.

4 A Yes.

5 Q Do you recall which conversation this was?

6 A No, I don't know which conversation it was.

7 Q How close were these two conversations in time with  
8 Mr. Stoller?

9 A Oh, within two weeks apart.

10 Q Did you see him dial the phone?

11 A Yes.

12 Q Did you hear him talk?

13 A Yes.

14 Q What did he say to you before he dialed the phone?

15 A He said he was going to call Marty Frank.

16 He said, "I want to talk to Marty."

17 Q Did you hear him talk on the phone?

18 A Yes.

19 Q What did Mr. Stoller say?

20 A I could just hear Mr. Stoller's answer.

21 He said, "I have Joe Bonavia here. He won't take  
22 the Fifth."

23 MR. FELDSHUH: Please keep your voice up.

24 A He said, "I have Mr. Bonavia here," and I could hear  
25 him say, "He won't take the Fifth."

I don't know then -- I don't follow what his

1 gwrf 2 Bonavia-direct

2 conversation was with him.

3 Q What did Mr. Stoller then do with the phone?

4 A He then asked me to talk to Martin Frank.

5 Q Did you get on the phone?

6 A Yes.

7 Q Tell us, please, what your conversation was with  
8 Mr. Frank?

9 A Martin Frank said, "Why don't you take the  
10 Fifth Amendment."

11 I said, "I'm not going to take the Fifth Amendment.  
12 I don't want to."

13 He said, "You are not to involve us in any  
14 Swiss bank accounts, anything to do with Bank Hofmann and  
15 keep Phil and Jerry" -- meaning Stoller and Allen -- "out  
16 of this."

17 Q You recall anything else Mr. Frank said to you?

18 A He said I wasn't to mention Training With The Pros.

19 Q Anything else than what you just testified, any  
20 further conversation?

21 A Not on the telephone.

22 Q In the conversation with Mr. Stoller, was there  
23 any mention of your bank records?

24 A Yes.

25 Q Tell us, please, what he said? Was this before



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2 the phone conversation with Mr. Frank or after?

3 A I think it was before.

4 Q Tell us, please, what was said?

5 A Mr. Stoller said he pulled out of his pocket  
6 a copy of my secret bank account.

7 Q What was that, Barbin?

8 A Barbin, a copy of my account which I had never  
9 seen or been able to get.

10 He said, "You know what this is," and I could see  
11 it said 4318, Barbin, and the date was current.

12 He said, "I can put you in jail with this."

13 He says, "I've got the papers. I can get the papers  
14 and you can't."

15 He says, "You haven't got a thing from Bank Hofmann  
16 on your secret account."

17 I said, "No, I haven't been able to get anything.  
18 I don't know what has happened in the account."

19 He said, "I can mail this to the SEC, the IRS.  
20 I can take care of whatever I want and I can put you in  
21 jail for five years."

22 I said, "Phil, you have a numbered account  
23 that you don't show at all."

24 He said, "Prove it."

25 I said, "I can't prove it."

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2 Q Any further conversation?

3 A No, not that I recall.

4 Q Did you then go to the grand jury?

5 A Yes, I did.

6 Q Did you tell the truth?

7 A No, I didn't.

8 Q After your appearance before the grand jury did  
9 you meet Mr. Stoller?

10 A Yes, I did.

11 Q Where did you go?

12 A To East 60th Street.

13 Q Did you have a conversation with him there?

14 A Yes. He wanted to know what the testimony was  
15 about.

16 Q Was anyone else present?

17 A No.

18 Q Tell us, please, what you said to Mr. Stoller  
19 and what he said to you?

20 A I told him what the testimony was and how I  
21 answered it and he said, "I want you to go over and talk to  
22 Martin Frank."

23 Q Then where did you go?

24 A We went to Mr. Martin Frank's office.

25 Q Anyone other than yourself and Mr. Stoller?

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2 A No, just Mr. Stoller.

3 Q Did you have the conversation with Mr. Frank?

4 A Yes.

5 Q Was anyone else present in Mr. Frank's office?

6 A No.

7 Q Tell us, please, what was said by you, Mr.

8 Stoller and Mr. Frank?

9 A Mr. Frank asked me what was said at the grand  
10 jury, what questions were asked me and how I answered  
11 them.

12 I told him -- he said, "You didn't get us involved  
13 in any Swiss banking."

14 I said, "No, I didn't."

15 I told him how I answered all the questions.

16 He said, "That's good."

17 But he did say, "I think you should have taken  
18 the Fifth Amendment."

19 Then he -- I asked him, I said, "What about  
20 this Training With The Pros that I have that I don't want  
21 and never did want"?

22 He turned to Stoller and he said, "This man is  
23 the best promoter, stock promoter in the City of New York."

24 He says, "If you will do what he tells you and  
25 stick with him, you will not only get your money, but you

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2 will make a profit on it."

3 He said, "You know Fred Herbert is going to be  
4 president of Bank Hofmann pretty soon and we are all going  
5 to make a lot of money then."

6 Q Any further conversation that you can recall?

7 A Yes -- no, that was all.

8 Q After you left Mr. Frank's office, where did you go?

9 A Left Mr. Frank's office and went to Mr. D'Onofrio's  
10 office.

11 Q How How did you get to Mr. D'Onofrio's office?

12 A We took a cab --

13 Q Stop.

14 Did you have a conversation with Mr. Stoller  
15 in the cab?

16 A Yes. I told Mr. Stoller that I didn't like what  
17 had happened, I didn't like the threats. I said I didn't  
18 like the testimony I gave. I felt very uneasy about it and  
19 I said, "I think I should see an attorney and possibly  
20 reverse my testimony."

21 Q Did Mr. Stoller say anything to you?

22 A He said, "You don't have to see an attorney. Let  
23 Marty Frank handle this and represent you. He has good  
24 connections at the United States Courthouse.

25 Q Now, after you got to Mr. D'Onofrio's office,

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2 did you have a conversation with Mr. D'Onofrio with Mr.  
3 Stoller present?

4 A Well, I first had a conversation with Mr. Allen  
5 and Stoller and D'Onofrio.

6 Q Tell us, please, what the conversation was?

7 A I don't know if we picked up Mr. Allen at the  
8 East 60th Street office or if Mr. Allen was at Mr.  
9 D'Onofrio's office when we got there. I know we went into  
10 a little conference room and there was myself, Mr. Allen,  
11 Mr. Stoller and Mr. D'Onofrio. Mr. Allen started the  
12 conversation.

13 He said, "Ray, Joe is one of my oldest clients.  
14 He has been with me since 1969 and, you know, he got a  
15 terrible hosing on this Training With The Pros. We have got  
16 to get this money back to him."

17 Ray D'Onofrio said, "That's right, Joe, that was  
18 a piece of bad judgment on our part."

19 He says, "We did a bad thing. We are going to  
20 make it up to you."

21 He says, "I'll give you 100,000 shares of  
22 unregistered stock in Training With The Pros free," and  
23 I didn't know what unregistered stock was at that time  
24 and I asked him.  
25

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2 He explained it to me. He said there was a sale  
3 of Training With The Pros to Fuqua Industries and he said  
4 with the stock in my account in Zurich and with the 100,000  
5 shares of unregistered stock, that it would refund all of  
6 my money to me.

7 He said, "It will take several months to do this.  
8 I want you to be patient, but I'll get you the 100,000  
9 shares of registered stock".

10 Q Registered?

11 A Unregistered stock.

12 Q Did there come a time when Mr. Stoller and  
13 Mr. Allen left the office?

14 A Yes, they went in another office and talked to  
15 an Oriental man I believe named Yamada.

16 Q Did you then have a conversation with Mr. D'Onofrio?

17 A Yes. They were in the other office talking to  
18 this Oriental man and I was in the hall and Mr. D'Onofrio  
19 came out. I thought I would confront him --

20 Q Don't tell us what you thought, Mr. Bonavia.

21 A I said --

22 Q Mr. Bonavia, listen to my question.

23 What did you say to Mr. D'Onofrio and what did he  
24 say to you?

25 A I said to Mr. D'Onofrio that I had testified

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2 at the grand jury, I testified falsely under a threat  
3 and I said my life was threatened.

4 He said, "By who"?

5 I said, "By Mr. Stoller, but your name was used."

6 Mr. D'Onofrio said, "It's ridiculous."

7 He says, "I know nothing about it."

8 "He said he talked to you about it this morning."

9 I said, "He did not talk to me."

10 He said, "I'm not interested in doing anybody  
11 any physical harm. If you are worried about that, rest  
12 at ease."

13 Then I told him that I thought I needed an attorney  
14 and I said, "Philip Stoller recommended that I use Martin  
15 Frank."

16 And he said, "Do you know of an attorney?"

17 I said, "No, I don't."

18 He went and talked to a man by the name of Duke  
19 in the next office. The door was opened. I couldn't hear  
20 what they said, but he came out and he said, "Duke  
21 recommends a man by the name of Patrick Wall, an attorney,  
22 that we have no connection with, and he said, "If you want,  
23 go see him."

24 They gave me his address and I went to see Patrick  
25 Wall and I told him the whole story.

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2 Q Stop.

3 Let's not hear what you told Mr. Wall. It is  
4 outside the scope of this.

5 Let me direct your attention now, Mr. Bonavia,  
6 to approximately the late fall of 1970.

7 Did you meet Mr. Stoller at the Waldorf-Astoria  
8 Hotel?

9 A Yes, I did.

10 Q Could you pin the date down a little bit better?

11 A It was late in the fall, I would say probably  
12 November.

13 Q Was anyone else there?

14 A Yes, Mr. Herbert was there.

15 Q Did you have a conversation with Mr. Stoller and  
16 Mr. Herbert?

17 A Yes.

18 Q Tell us, please, what you said to Mr. Herbert  
19 and Mr. Stoller and what they said to you?

20 A I would like to say I went there because Stoller  
21 told me Mr. Herbert was going to be there.

22 Mr. Stoller said he would meet me in what they  
23 call Peacock Alley, the Waldorf, at 7:00 o'clock.

24 I went down at 7:00 and Mr. Stoller was sitting  
25 there. I sat down and he said, "We have had enough



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2 trouble with you on Training With The Pros. You are muddying  
3 up the waters, you are causing trouble and you are not going  
4 to cause any more trouble," and he pulled out a copy of  
5 my account again and showed me the date. It was a current  
6 date, marked 4318, Barbin, Bank Hofmann. He showed me the  
7 account.

8 I said, "You showed me a copy of my account before."

9 I says, "It seems funny that you can get a copy  
10 of my account and I can't."

11 He said, "That's right, and you never will  
12 either."

13 I objected to Training With The Pros.

14 He said, "How can you prove you own Training With  
15 The Pros?"

16 I said, "I can't."

17 He said, "Do you have a stock certificate or  
18 purchase slip?"

19 I said, "No, I don't have."

20 At that time Mr. Herbert came walking in  
21 and I confronted Mr. Herbert with it. Mr. Herbert said  
22 the same thing.

23 He said, "How can you prove you own Training With  
24 The Pros?"

25 I said, "I can't prove I own it because I have no

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2 documents."

3 He said, "How do you prove you even have a secret  
4 account in Switzerland?"

5 I said, "I can't."

6 But, I said, "I can do this, I think I bought  
7 the stock. The stock went in my account at a higher  
8 price than market value."

9 And I said, "I can prove that here through  
10 American people who sold the stock to Bank Hofmann and  
11 what the quote was on it at the time, and I paid higher  
12 than market value."

13 Mr. Herbert laughed, and in his broken English  
14 said, "I have you by the ass."

15 He said, "We sold 500 shares of Training With  
16 The Pros for you for a higher price than you paid for  
17 it to prove you didn't pay higher than market value."

18 That was the first time that I knew 500 shares  
19 had been sold for me.

20 Q Tell us, please, if there was any further con-  
21 versation with Mr. Herbert?

22 A Mr. Herbert then told me that if I could just  
23 calm myself down over this Training With The Pros, that he  
24 was going to be president of the bank soon and he could  
25 cross this into other accounts and take care of it.

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2 O Was there any mention as to where you bought the  
3 stock from?

4 A Yes, I --

5 O By whom?

6 A I mentioned that I bought the stock from Philip  
7 Stoller and Philip Stoller turned to me and said, "Yes,  
8 what the hell can you do about it?"

9 I said, "I guess I can't do anything about it.  
10 I can't get my records, I can't even prove I own it."

11 Q Mr. Bonavia, let me show you now what has previously  
12 been marked as Government's Exhibit 66-A through C.

13 Would you look at these documents, please. I  
14 ask you if you can identify them.

15 THE COURT: Again, are we to understand this  
16 is 67-A to and including C?

17 MR. SORKIN: 66, your Honor, A through and including  
18 C.

19 THE COURT: I beg your pardon.

20 Q What are those documents?

21 A These are the sales slips for 500 shares of  
22 Training With The Pros out of my account.

23 Q When did you pick up these documents?

24 A March 1974.

25 Q '74?

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2 A '72. I'm sorry.

3 Q Where did you pick them up from?

4 A Picked them up at Bank Hofmann.

5 Q Are these exact copies of the documents you picked  
6 up?

7 A Yes, they are.

8 MR. SORKIN: Your Honor, we offer '66-A, 66-B  
9 and 66-C in evidence.

10 MR. GOULD: No objection.

11 MR. FELDSHUH: Same objection, subject to connec-  
12 tion, your Honor.

13 THE COURT: At this point I'm going to change that  
14 ruling and deem these documents connected for purposes of  
15 Count 1 with respect to your client as well as Stoller.

16 MR. FELDSHUH: Exception.

17 MR. SORKIN: Does that apply to the purchase  
18 confirmations, your Honor?

19 THE COURT: Yes.

20 (Government's Exhibits 66-A, B and C for  
21 identification received in evidence.)

22 MR. SORKIN: With respect to Barbin documents,  
23 65, does that also include that?

24 THE COURT: Correct, all these documents will now  
25 be received for whatever they are worth as to both defendants.

xx

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2 MR. SORKIN: Thank you, your Honor.

3 MR. SORKIN: I needn't read them, your Honor.

4 Since there are only three, I will pass them around to the  
5 jury.

6 (Pause.)

7 Q Was there any further discussion at this meeting  
8 at the Waldorf that you recall?

9 A Yes. I talked to Muir Weissinger.

10 Q Did he appear or --

11 A He came in while we were talking.

12 Q I'm sorry, I didn't hear you.

13 A He came in while we were talking.

14 Q Did you have a conversation with him in Mr. Stoller's  
15 and Mr. Herbert's presence?

16 A Mr. Stoller was present. Mr. Herbert left.

17 Q Tell us, please, what you said to Mr. Weissinger  
18 and what Mr. Weissinger said to you?

19 A Mr. Weissinger told me that he would no longer  
20 join me in any litigation with Training With The Pros since  
21 he had been taken care of and had his money back.

22 Q Any further conversation?

23 A Not that I can recall.

24 Q Let me show you what has been marked as Government's  
25 Exhibit 67 for identification.

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2 Would you look at 67, please. I ask you if you  
3 can identify that.

4 A Yes.

5 MR. GOULD: What was your question?

6 MR. SORKIN: Can he identify that document.

7 MR. GOULD: I will concede it is a copy of a  
8 letter he wrote to Bank Hofmann. That is not the problem  
9 at all.

10 MR. SORKIN: If you would let me develop it.  
11 I don't know what Mr. Gould's objection is. I merely asked  
12 him if he can identify this document.

13 THE COURT: He said yes. What is your next  
14 question.

15 Q Tell us, please, Mr. Bonavia, is that your  
16 writing on it?

17 A Yes, it is.

18 Q Where was that document prepared?

19 A In New York.

20 MR. GOULD: If your Honor please, I have  
21 already stipulated, conceded it is his writing, addressed  
22 to Bank Hofmann.

23 THE COURT: What is the date of it, sir?

24 THE WITNESS: March 19, 1971.

25 MR. FELDSHUH: '71.

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2 THE COURT: All right.

3 MR. SORKIN: May I proceed?

4 THE COURT: Surely.

5 Q Where was this document prepared?

6 MR. GOULD: I object to that, irrelevant,  
7 immaterial and nothing to do with the issues in this case.

8 THE COURT: I think he already said in New York;  
9 is that right?

10 A Yes.

11 Q Was it prepared in anyone's presence?

12 A Yes.

13 MR. GOULD: I object.

14 THE COURT: Overruled.

15 Q In whose presence?

16 A Mr. Stoller.

17 Q Anyone else?

18 A Mr. Allen.

19 Q Where in New York?

20 A I don't recall where it was. It was where their  
21 office was at the time. They do business out of brokerage  
22 firms. I believe they had left East 60th Street.

23 MR. SORKIN: I now offer this in evidence, your  
24 Honor.

25 MR. GOULD: No objection.

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2 MR. FELDSHUH: I will object to it, your Honor.  
3 I don't see how it is binding on any of the defendants.  
4 It is a letter written by this --

5 THE COURT: never mind. I will look at it.

6 (Pause.)

7 THE COURT: The objections are overruled. I will  
8 receive it.

9 MR. GOULD: I didn't object to it, your Honor.

10 THE COURT: I beg your pardon. The objection  
11 of Mr. Feldshuh is overruled.

12 (Government's Exhibit 67 for identification  
13 received in evidence.)

xx

14 Q Tell us, Mr. Bonavia, did you have a conversation  
15 with Mr. Stoller and Mr. Allen prior to writing this?

16 A Yes.

17 Q Tell us, please, what Mr. Stoller said and what  
18 Mr. Allen said?

19 A I told them that I had been to see an attorney  
20 in Switzerland. They said they didn't want any trouble,  
21 there was enough trouble on Training With The Pros, that  
22 they would sell 10,000 shares at a time if they had to buy  
23 it themselves.

24 They said, "We will ask you for sale orders  
25 of 10,000 shares until the stock is sold. If the amount



1        gwrfr 19                      Bonavia-direct  
2        of sale does not come up to what you paid for it, we will  
3        make up the difference ourselves."

4                      I gave them the order to sell 10,000 shares  
5        and said I would give them an order to sell 10,000 each  
6        time they wanted it until my money was refunded.

7                      Q        Mr. Bonavia, where did you get the additional  
8        shares since you only purchased 9,100 and 500 were sold?

9                      A        The stock split three for one. The 500 shares  
10       were sold prior to the split. 8,600 shares were split  
11       three for one making a total of 22,800 shares.

12                     MR. SORKIN: I would just like to read 67 to  
13       the jury, your Honor. It is very short.

14                     (Mr. Sorkin read from Government's Exhibit 67  
15       in evidence to the jury.

16                     Q        Mr. Bonavia, did you give this to Mr. Herbert?

17                     A        I gave it to Mr. Stoller.

18                     Q        When did you next see this document?

19                     A        When I picked up my documents at Bank Hofmann  
20       in 1972.

21                     Q        Let me direct your attention, Mr. Bonavia --

22                     THE COURT: I think if you are going into a new  
23       subject, we better stop here for luncheon.

24                     Mrs. DeBartola and ladies and gentlemen, we will  
25       suspend for luncheon and resume at 2:15.

(Luncheon recess.)

1 1a pm mbrf l

2 AFTERNOON SESSION

3 2:15 p.m.

4 (In open court, jury present.)

5 J O S E P H B O N A V I A, resumed the stand

6 and testified further as follows:

7 DIRECT EXAMINATION

8 BY MR. SORKIN (Continued):

9 Q Mr. Bonavia, again, please keep your voice up.

10 Mr. Bonavia, did you ever meet a man by the name  
11 of James Feeney?

12 A Yes.

13 Q When did you first meet him?

14 A I can only remember of one time. There may have  
15 been another but I met him in either the latter part of '71  
16 or early '72 at Jerome Allen's apartment on 72nd Street.

17 Q Was anyone else present?

18 A Mr. Stoller was present, Mr. Weissinger.

19 Q Anyone else?

20 A A man by the name of Artie.

21 Q Did you subsequently --

22 MR. GOULD: I didn't get that.

23 MR. SORKIN: A man by the name of Artie.

24 MR. FELDSHUH: What?

25 MR. SORKIN: Artie, A-r-t-i-e.

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2 Q Was Mr. Allen there?

3 A Yes, Mr. Allen was there.

4 Q Did you have a conversation in Mr. Stoller's

5 presence with Mr. Feeney?

6 A Yes.

7 Q Tell us, please, what was said and confine your-

8 self to Training With The Pros?

9 A They discussed Mr. D'Onofrio, that Mr. D'Onofrio

10 had talked to the United States Attorney about Training

11 With The Pros and created a lot of problems.

12 Mr. Stoller said that he would kill D'Onofrio

13 and then commit suicide.

14 Q Now, let me direct your attention, Mr. Bonavia,

15 to September of 1972, the Biltmore Hotel.

16 Did you meet Mr. Stoller there?

17 A Yes.

18 Q And did you have a conversation with him?

19 A Yes.

20 Q Where was the conversation?

21 A It was out in the hallway of the cocktail room

22 or dining area.

23 Q Keep your voice up Mr. Bonavia.

24 A It was off in a hallway of the cocktail room

25 or dining area on the first floor.

2 Q Was anyone else present?

3 A Not in the hallway, no.

4 O Tell us please what you said to Mr. Stoller and  
5 what Mr. Stoller said to you.

6 A Mr. Stoller asked me that if I had been to see  
7 an attorney and engaged an attorney in Switzerland on  
8 Training With The Pros. I said yes. And he said, "Some stupid  
9 ass at Bank Hofmann gave you your records, is that right,"  
10 and I said, "Yes." And he says, "I want to tell you right  
11 now you aren't to go to Zurich again and you are not  
12 going to go see that goddam four-letter word Swiss attorney  
13 again. There is enough trouble on Training With The Pros  
14 without you causing any problems:" and he said, "you  
15 filed suit in Zurich, and you are not going to file suit  
16 over here, you are not going back to Zurich."

17 He says, "You won't leave New York id you don't  
18 do what we tell you."

19 He says, "If you go to the United States Attorney's  
20 I have told you time and again that this subject is getting  
21 hotter and hotter, and you are the cause of it."

22 Q Now was there any mention of your son, Mr.  
23 Bonavia?

24 A Yes, he mentioned my son in Florida, that if he  
25 didn't get me he would get him.

2 MR. GOULD: What? I didn't hear that last.

3 Q Please repeat what Mr. Stoller said to you.

4 A He mentioned my son in Florida. He said if  
5 he didn't get me he would get my son in Florida.

6 Q Did you have any further conversation with Mr.  
7 Stoller at that time?

8 A I told him he ought to go see a psychiatrist.

9 Q Mr. Bonavia, what have you been told by the  
10 Government with respect to your testimony here today?

11 MR. GOULD: I object to that, your Honor.

12 THE COURT: Yes, sustained as to form.

13 Q What is your understanding with respect to your  
14 testimony?

15 MR. GOULD: I object to that.

16 THE COURT: Sustained.

17 That could be anything Mr. Sorkin and I don't  
18 think you want anything.

19 MR. SORKIN: Your Honor, then I will rest. No  
20 further questions.

21 MR. GOULD: You don't mean you will rest.

22 MR. SORKIN: No, I will rest with my questioning  
23 of Mr. Bonavia.

24 MR. GOULD: I thought maybe you were resting.  
25

## 2 CROSS EXAMINATION

3 BY MR. GOULD:

4 Q Mr. Bonavia, I understood you to say, sir, on  
5 direct examination that you are engaged in the commercial  
6 real estate business in Rockford, Illinois, correct?

7 A Yes.

8 Q What does commercial real estate mean?

9 A It is real estate other than people for residential  
10 purposes.

11 Q Residential?

12 A For people -- for use other than residential  
13 purposes, stores, offices.

14 Q How long have you been in that business?

15 A 21 years.

16 Q And are you also in the bowling alley business?

17 A Yes.

18 Q But not as a real estate operation? You operate  
19 bowling alleys, don't you?20 A Well, I am not active in the business. I have  
21 never thrown a bowling ball in my life.

22 Q You what?

23 A I am not active in the business. I have never  
24 thrown a bowling ball in my life.

25 Q But you have substantial interests, do you not,

2 in certain bowling alleys?

3 A Yes.

4 Q That has nothing to do with the real estate  
5 business?

6 A Well, I own the buildings that they are in.

7 Q I see.

8 A The corporations lease from me.

9 Q You own them or somebody, some company owns them?

10 A I do.

11 Q You personally?

12 A I personally.

13 Q In your own name?

14 A Yes, sir. In corporation names.

15 I own the stock.

16 Q What other kinds of business have you been in, say,  
17 in the last 20 or 30 years?

18 A Oh, I was in the automobile business up until  
19 1952.

20 Q In what way were you in the automobile business?

21 A I was a Packard dealer.

22 Q You had an agency, did you not?

23 A Yes, sir.

24 Q And in connection with that agency you had  
25 repair facilities?

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A I had a service manager that operated the service shop.

Q That's right, you had people who repaired automobiles and you were the sole proprietor of that?

A No, sir.

Q You were a proprietor of it?

A I had a partner.

Q And you operated it yourself?

A No, he took care of the service end of it.  
I managed sales.



Q But you knew something about the service business,

didn't you?

A No, sir, I --

Q Not a thing?

A Not a thing. That's why I took care of the sales.

Q Now sir, I understand that you have known Mr.

Allen and Mr. Stoller since 1959 or 1960?

A Yes, sir.

Q Correct? And during the period -- let's take it

from 1960 to 1965, they acted as investment advisor to you, is

that not right?

A Yes, that's correct.

Q They would recommend securities, and if you liked

their recommendations you would buy them?

A Correct.

Q Correct?

A Yes.

Q And sometimes they would tell you when to sell them,

correct?

A Yes.

Q And they recommended all kinds of securities,

did they not?

A Yes.

Q Securities listed on the New York Stock Exchange?

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Bonavia-cross

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A Mostly over-the-counter securities, sir.

Q But some on the New York Stock Exchange?

A There: probably were, yes.

Q Don't you remember?

A Yes, I remember Texas Gulf Sulfur. I don't know if it is listed on the New York Stock Exchange, but I believe it is.

MR. SORKIN: Mr. Bonavia, would you keep your voice up, please?

THE WITNESS: Right.

Q You don't know if TexasGulf Sulfur is listed on the New York Stock Exchange?

A I think it is.

Q How manytimes did you look at the price at which Texas Gulf Sulfur closed while you held it?

A Sir, I have never subscribed to the Wall Street Journal and I don't have occasion to look up stocks.

Q How about the Chicago Tribune, do you read it?

A I don't subscribe to the Chicago Tribune.

Q How about the Rockford paper, don't they have it?

A They don't carry it.

Q So you didn't know where to look?

A I talked to Mr. Stoller and Mr. Allen two or three

2 times a week.

3 Q So we have it that between 1960-1965 how much  
4 in securities were you carrying?

5 A Oh, I wouldn't have any idea. Probably 100,000.  
6 I think at the time I knew if Texas Gulf Sulfur was listed  
7 on the New York Stock Exchange or not, but I don't remember  
8 now if it was.

9 Q Let's get down to something here. You bought  
10 a lot of listed securities on their recommendation, isn't  
11 that so?

12 A Yes.

13 Q Don't you remember?

14 A Yes.

15 Q That's all I want to know is whether you remember  
16 buying a lot of listed securities. And you paid them for  
17 their services, didn't you?

18 A Yes, I did.

19 Q Didn't you have an arrangement with them under which  
20 they were to get something for advising you? Isn't that  
21 what you had?

22 A They billed me.

23 Q What did they bill you?

24 A Whatever they thought, the time they had spent.

25 Q Was there no percentage arrangement?

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A There was never a definite agreement. Much of it was based upon time which they had spent.

Q How about a percentage of profits? Weren't they entitled to a percentage of profits?

A On the Swiss accounts, they asked for 10 per cent of profits.

Q And didn't you agree with them that they were entitled to get 10 per cent of any money that you made on the swiss accounts?

A Yes.

Q You did, so we have it that they were entitled by agreement with you to get 10 per cent of anything, any profits that you made on the Swiss accounts, correct?

A Correct.

Q And that agreement went on from about 1960 until when?

A Well, I'd say 1965 until the Training With the Pros. That was the end.

Q What year would you say the end came?

A 1969.

Q But in 1965, 1966, 1967, 1968 and part of 1969, they were entitled to 10 per cent of your profits on the Swiss accounts?

A Yes.

mbb-5

Bonavia-cross

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Q Fine.

3

A As far as the percentage was concerned.

4

Q Good, as far as percentage was concerned, yes.

5

Q When for the first time did you open a Swiss

6

bank account, sir?

7

A 1965, sir.

8

Q And that was the account that you opened with

9

the Bank of Zurich which you called an open account?

10

MR. SORKIN: Bank of Zurich?

11

Q Excuse me, Bank Hofmann of Zurich.

12

A Yes.

13

MR. GOULD: I am very sorry.

14

MR. SORKIN: That is all right, sir.

15

Q Bank Hofmann and that was your first Swiss account,

16

correct?

17

A Yes, sir.

18

Q That was an open account?

19

A Yes, sir.

20

Q You didn't want to conceal that from anybody?

21

A No, sir.

22

Q And your only purpose in doing it was that you

23

got better credit terms over there, isn't that right?

24

A Yes.

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Q And that was at the suggestion of Mr. Stoller?

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Bonavia-cross

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A Yes, sir.

Q You are absolutely sure that it was Stoller who suggested that to you?

A Yes, sir.

Q You have so testified here?

A Allen also did.

Q Who?

A Allen also did.

Q All right. We have it now that you opened the bank account in 1965 at the suggestion of Mr. Stoller and Mr. Allen, correct?

A Mr. Stoller gave me the application to apply for the opening the account.

Q Mr. Bonavia, you know we will get along much more quickly if you listen to my questions carefully.

MR. SORKIN: Your Honor, objection. I think he is listening and I think he is answering his questions.

MR. GOULD: Well, I am sorry.

THE COURT: Next question.

Q I am using certain specific words, Mr. Bonavia. I want you to tell me at whose suggestion you opened the account at the Bank Hofmann in Zurich?

A Philip Stoller's.

Q And you added Mr. Allen a little while ago, right?

mbb-7

Bonavia-cross

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A He was there and agreed with it, yes.

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MR. GOULD: Would you mark this for identification, please.

5

MR. SORKIN: Do you have a copy?

6

7

MR. GOULD: I don't have a copy, but you will get one very shortly.

xxx

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(Stoller Exhibit Q was marked for identification.)

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Q Now, sir, I want you to look at Stoller Exhibit Q for identification and tell me, is that your handwriting which appears on there, your signature?

13

14

15

A Yes, sir, it is.

16

17

18

Q And this paper which I have shown you, sir, has written on it "Stationery of Fairview Shopping Center."

19

20

21

A Yes, sir.

Q That is one of your enterprises, is it not?

A Yes, sir.

22

23

24

25

Q So we have it that you signed this letter and it was written on your stationery. You remember sending the letter, don't you?

A Yes, I --

Q Just --

A I did. I do.

Q You sent the letter.

1 mbb-8

Bonavia-cross

1573

2 Now, sir, in the letter that I have shown you  
3 you say that it was at the suggestion --

4 MR. SORKIN: Your Honor, I am going to object.

5 MR. GOULD: I will offer it in evidence.

6 MR. SORKIN: Let's look at it first.

7 MR. GOULD: Certainly, sir.

8 (Pause.)

9 MR. SORKIN: No objection, your Honor.

10 MR. GOULD: Thank you very much.

End 1B 11

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THE COURT: May I ask what is the date stated  
on that letter?

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THE CLERK: May 13, your Honor, 1965.

5

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MR. GOULD: I will handle that in a moment, your  
Honor.

xxx

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8

(Defendant Stoller Exhibit Q for identification  
was received in evidence.)

9

10

(Mr. Gould read from Defendant Stoller Exhibit  
Q in evidence to the jury.)

11

12

Q Mr. Bonavia, was it indeed at the suggestion of Mr.  
Walter Wirth that you opened the account?

13

14

15

A No, sir, Philip Stoller dictated that letter  
because he didn't want Lieberbaum to know at the time he was  
doing business with Bank Hofmann.

16

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18

19

Q So the letter was a fraud, is that correct?

A Yes, I wrote what Mr. Stoller told me to write.

Q Was there some reason why you wanted to fool  
Lieberbaum or Bank Hofmann about this?

20

21

22

A No, it was a favor to Mr. Stoller.

Q You were just doing him a favor, anything he  
told you to write, you wrote, is that right?

23

24

25

A I had no ill feelings with him at the time.

Q You had what?

A I say I had no ill feelings with him at the time.

2 I didn't see any reason why I should not do that.

3 Q You mean you didn't see any reason why you should  
4 not sign a letter that is a lie?

5 A At the time I didn't. I think now I should have.

6 Q The letter is a lie, isn't it?

7 A I did a favor for Philip Stoller.

8 Q I want to be very sure about something on this  
9 account that you opened in 1965. That was an open account  
10 and there was nothing to conceal in it?

11 A The letter to Bank Hofmann, any inquiries by the  
12 Internal Revenue Service of America, they were to provide  
13 any and all information. I received my slips. I paid my  
14 income tax on it, until I opened the account in 1968. The  
15 bank didn't give me any more information.

16 Q Be good enough for the moment to stay with the  
17 period from 1965, Mr. Bonavia, to 1968, when the only account  
18 that you had in Switzerland was the open account in the Bank  
19 Hofmann, correct?

20 A Yes, sir.

21 Q Isn't it a fact that you never had any profits  
22 in that account?

23 A No, I think I paid income tax.

24 Q Did you have any profits in the open account?

25 A I filed income tax with Bank Hofmann.

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Bonavia-cross

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Q Mr. Bonavia, I am not asking you about what you filed. I want to know whether in the open account that you had you -- you did have securities transactions in it, didn't you?

A There were some activities, not a great deal.

Q Did you have any profits in it?

A Yes.

Q Did you have losses in it?

A I had profits.

Q Did you report the net profit that you had in the --

A I reported the net profit to the extent that Bank Hofmann gave me certificates on, yes.

Q Did you not arrange with Bank Hofmann that they should only report losses on that account?

A No, I did not. I reported gains. I reported over \$100,000 in one year.

Q Your testimony today, as I understand it, is that you reported every single transaction that you had in that open account whether a profit or a loss?

A Whatever the slips the bank gave me.

Q I see.

A If they did not disclose everything to me, I had no way of finding it out.

Q But since 1972, sir, you have had all the records

1 gab-4

Bonavia-cross

2 of that account, haven't you?

3 A Yes, sir.

4 Q And have you gone back over those records to see  
5 if maybe you left something out? Have you or haven't you?

6 A Yes, sir.

7 Q Did you leave anything out?

8 A No, sir.

9 Q So your testimony is today that you reported every  
10 transaction that took place in the open account?

11 A Every transaction that Bank Hofmann gave me I  
12 reported.

13 Q And you have verified since '72 to ascertain  
14 that is the fact? That is all I want you to do, tell me  
15 today, as you sit on the stand, that you reported every  
16 single transaction that you had in the open account? Just  
17 yes or no.

18 A I reported every transaction Bank Hofmann gave  
19 me or had knowledge of.

20 Q That is your answer?

21 A Yes, sir.

22 Q Let's get back to the opening of this account, sir.  
23 You remember being examined before the grand jury on December  
24 11, 1969? You told us about that this morning, right?

25 A Yes, sir.

1 gab-5

Bonavia-cross

2 Q And you were under oath?

3 A Yes, sir.

4 Q And you were sworn? You remember being sworn  
5 there?

6 A Yes, sir.

7 Q You knew that it was a criminal offense to tell a  
8 lie, didn't you?

9 A Yes, sir.

10 Q Let's get to the opening of the account. I am  
11 referring to Page 71 of the Bonavia grand jury testimony  
12 on December 11, 1969.

13 "Q You have had an account, a trading account, at the  
14 Bank Hofmann, have you not?

15 "A Yes."

16 You gave that answer to that question, did you  
17 not?

18 A Yes, sir.

19 Q And then you were asked:

20 "Q How did you open that account? Who was the person  
21 who recommended your opening that account?

22 "A This Walter Wirth that I met here in New York.  
23 It is a full disclosure account. I brought all of my  
24 records to the SEC and I imagine you have copies of them. I  
25 have given them to the Internal Revenue Department. It

1 was just all audited and approved for the year 1968."

2 Did you give that answer?

3 A Yes.

4 Q "Who was the one who recommended you to go to the  
5 Bank Hofmann account? What was the name of the man?

6 "A I believe it was Walter Wirth, if that name is  
7 correct. I think you would know it if it is."

8 Did you give those answers to those questions?

9 A Yes, sir, and I testified this morning --

10 Q They were lies, were they not?

11 A I testified why I gave those answers this morning.

12 Q But they were lies?

13 A Yes.

14 Q Did you make those lies up or did somebody else make  
15 them up?

16 A Somebody else told me what to say. I testified to  
17 that this morning.

18 Q How old were you when you went to the grand jury  
19 in 1969?

20 A Fifty-one.

21 Q And you have been in business for some 30 years,  
22 haven't you?

23 A Yes.

24 Q Did you ever testify in any kind of proceeding  
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Bonavia-cross

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before you went to the grand jury that day?

A Minor cases, injury cases that the insurance company defended or something.

Q That is all the experience you had, right?

A Yes.

Q You have never been charged with a crime, have you, in your whole life?

A No, I have never been charged with a crime.

End 2A

1 2b pm gwrf 1 Bonavia-cross

2 Q No. Before you went to the grand jury did you  
3 arrange or did Mr. Stoller or anybody else, that if they  
4 asked you who had recommended that you open the account,  
5 you were going to say Walter Wirth?

6 A Oh, definitely. They said, "Walter Wirth. Don't  
7 say we sent you to Bank Hofmann."

8 Q Who is "they"?

9 A Stoller and Allen.

10 Q Just those two?

11 A Yes, sir.

12 Q And that was one of the specific things that  
13 they put in your mind?

14 A Yes, sir, "Don't say that we sent you to Bank  
15 Hofmann or you know anything about Bank Hofmann as  
16 far as Stoller and Allen are concerned."

17 Q I gather then that you had a session with Stoller  
18 and Allen in which you tried to anticipate what the  
19 Government was going to ask you, correct?

20 A No. They anticipated it, I had no idea what the  
21 Government was going to ask me.

22 Q They told you what the Government was going to  
23 ask you?

24 A Yes.

25 Q And they told you what you should say in response



1 QWrf 2 Bonavia-cross

2 to the questions?

3 A Yes, they did.

4 Q One of the things that they specifically told  
5 you to say was that it was Walter Wirth who advised you  
6 or recommended to you or suggested to you that you  
7 open the account?

8 A Yes.

9 Q That was specific.

10 Actually, sir, didn't they urge you first to  
11 take the Fifth Amendment and not testify at all? Isn't  
12 that what they told you to do?

13 A Yes, they told me to take the Fifth.

14 Q You didn't want to do that, did you?

15 A No.

16 MR. SORKIN: I keep missing Mr. Bonavia's answers.  
17 I ask the Court to direct that he keep his voice up.

18 THE COURT: Yes, Mr. Bonavia, if you would just  
19 continue to speak up. Your voice did drop a little in  
20 the last couple of answers.

21 Q In other words, they wanted you to take the Fifth  
22 but you preferred to tell lies; is that it?

23 A I felt I had a choice of two evils.

24 Q You thought that it was better to go in and commit  
25 perjury than to take the Fifth?

1 gwrf 3 Bonavia-cross

2 A It was better to commit perjury than to die.

3 Q Than to die?

4 A Yes.

5 Q Why did you think you were going to die?

6 A For taking the Fifth, which leads to -- I would  
7 have to tell the truth, which I was forbidden to tell.

8 Q Keep your voice up. Talk a little louder, please.  
9 The last I heard you say --

10 THE COURT: Let's let him finish, gentlemen.  
11 He will keep trying. Patience. Go ahead, Mr. Bonavia,  
12 and finish. Speak to the back of the room, that helps.

13 THE WITNESS: All right.

14 A Would you repeat the question, please.

15 Q I asked you, sir, you said it was better to lie  
16 than to take the Fifth Amendment. Is that what you said?

17 A I didn't think the Fifth Amendment would hold up.  
18 I would eventually have to tell what they forbid me to tell.

19 Q You were afraid you would die if you did that,  
20 is that right?

21 A Yes, I was told that.

22 Q Who told you that?

23 A Philip Stoller.

24 Q This fellow over here, Stoller? Stand up, Mr.  
25 Stoller.

He was the one who told you if you didn't

1 gwrf 4 Bonavia-cross  
2 hold up and do what he said, he was going to kill you:  
3 is that right?

4 A He said D'Onofrio would.

5 Q D'Onofrio would kill you?

6 A If D'Onofrio wouldn't he would. He said he knew  
7 the people.

8 MR. SORKIN: Please, Mr. Gould. Let him finish  
9 his answer. I don't think he was finished with his answer.

10 THE COURT: Gentlemen, next question, please.

11 Q So it was not Stoller you were afraid of, it was  
12 D'Onofrio you were afraid of, correct?

13 A I was afraid of both. D'Onofrio did not personally  
14 threaten me. Stoller quoted D'Onofrio and I later asked  
15 D'Onofrio about that, as I testified this morning.

16 Q Mr. Bonavia, Stoller said that D'Onofrio was going  
17 to kill you if you didn't do what they told you; isn't  
18 that right?

19 A Yes, and he said that he would -- he could --  
20 he knew the people that would do it if D'Onofrio didn't.

21 Q I see.

22 If it wasn't D'Onofrio who was going to kill you,  
23 it was Stoller?

24 A Yes.

25 Q And he knew people who would do it?

1 gwrf 5 Bonavia-cross

2 A Yes.

3 Q You had known Stoller for a good many years when  
4 this conversation took place in 1969, hadn't you?

5 A Yes.

6 Q Have you ever seen him do anything violent?  
7 Did you ever see him hit anybody?

8 A No, I didn't see him hit anybody. I heard him  
9 make threats that he would get somebody.

10 Q You did hear him make threats?

11 A Yes.

12 Q You never saw him do anything violent, did you?

13 A He didn't threaten to do anything violent to  
14 me himself.

15 Q Did you ever meet him in the society of people that  
16 you thought were gangsters, thugs or men of violence?

17 A I didn't ever meet any of his friends.

18 Q Never any?

19 A No, very few. Those that come in the office,  
20 business associates.

21 Q Did you ever meet him, for example, in the society  
22 of a man named Ingrassia?

23 A What?

24 Q Did you ever meet Stoller with Mr. Ingrassia?

25 A Ingrassia was with me.

1 qwrf 6 Bonavia-cross

2 O He was with you?

3 A Yes.

4 Q I see.

5 MR. SORKIN: Excuse me, Mr. Gould.

6 Your Honor, with respect to this last answer  
7 by Mr. Bonavia, the society of people, I implore your  
8 Honor for just a moment to have a side bar on this. I think  
9 it would be to Mr. Gould's advantage to listen to the  
10 Government on this.

11 THE COURT: All right.

12 (At the side bar.)

13 MR. SORKIN: Your Honor, I'm repeating to you  
14 what he told me and Mr. Doonan. When he was at Feeney's  
15 apartment or at some point in time -- it was Arty that he  
16 mentioned. It was pointed out to him by Philip Stoller  
17 as being -- "You see that guy over there? That guy is  
18 with the Gambinos."

19 And he interpreted that as a threat to him.

20 We know from independent sources or from Allen  
21 that Allen at the time was into Berardelli, loansharking.  
22 Berardelli was hanging around Allen's apartment. He  
23 told us he is deathly afraid to mention Arty Berardelli's  
24 name, but he did tell us that Stoller did point out Berardelli  
25 in Allen's apartment. We are getting into an area that he

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Ponavia-cross

2 seriously thinks he has a problem with his life.

3 MR. GOULD: I think that is dreadful. You will  
4 protect him, won't you? What kind of nonsense is this? This  
5 is nonsense.

6 THE COURT: I think it is fairness at least, however,  
7 to bring it out. If you want to treat it as nonsense, really  
8 what the Government is saying, it is up to you.

9 MR. GOULD: That's right.

10 THE COURT: Let's proceed.

11 MR. GOULD: I can treat it as such.  
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(In open court.)

Q Mr. Bonavia, do I understand correctly that prior to your grand jury testimony which you told these lies, you had been threatened only once by Mr. Stoller, correct, and that was in the conference which preceded your grand jury testimony?

A By him where he would have someone do me bodily harm, yes, that is correct.

Q And that threat was that Mr. D'Onofrio would do you bodily harm but if D'Onofrio didn't do it he knew people who would?

A He said yes that he knew people who would.

Q He didn't tell you who the people were, did he?

A No, he didn't.

Q And you believed that, didn't you?

A I am still scared.

Q You are still scared?

A Yes, sir.

Q Of Stoller?

A Yes.

Q But you are not scared of D'Onofrio any more?

A No, because I had a talk with D'Onofrio. I explained that this morning.

Q How long after Stoller threatened you with

2 D'Onofrio did you talk to D'Onofrio?

3 A Well, the first time I talked to Stoller was two  
4 weeks and then I talked to him approximately two weeks later  
5 and then I talked to D'Onofrio the same day.

6 I testified to that this morning.

7 Q With relation to the time you testified before  
8 the grand jury on December 11, 1969, when did you talk  
9 to D'Onofrio about the threats?

10 A In the afternoon.

11 Q Before you testified or afterwards?

12 A No, after I testified.

13 Q Well, that afternoon then you knew from Mr.  
14 D'Onofrio -- Mr. D'Onofrio satisfied you that he was not  
15 going to hurt you, right?

16 A Right.

17 Q And you knew that that was a lot of baloney then,  
18 this threat from Stoller, correct?

19 A I knew that -- well at least I had reason to  
20 believe that D'Onofrio's side of it was baloney but I wasn't  
21 sure of that.

22 Q You weren't sure of D'Onofrio?

23 A Well, all he said was it is not true.

24 Q But you weren't convinced?

25 A No.



2 Q So as of the afternoon that you testified before  
3 the grand jury, you still thought your life was in danger  
4 from either Stoller or D'Onofrio?

5 A Yes, but I didn't talk to Mr. D'Onofrio until  
6 after I testified. You are indicating I talked to him before  
7 I testified.

8 Q I am not indicating anything. When you did  
9 testify, there is a question here I left out before --  
10 excuse me a minute -- let me see, you testified before the  
11 grand jury on December -- let me get that right.

12 MR. SORKIN: December 11, 1969.

13 Q December 11, 1969, correct?

14 A Yes.

15 Q And how long before that was it that Stoller made  
16 the threat?

17 A It was the day I got the subpoena. He called  
18 that morning and I hadn't received the subpoena. I would  
19 imagine it would be two weeks. I don't know. I don't  
20 keep a diary.

21 Q No more than two weeks, that is your best  
22 recollection?

23 A Well, I don't know how long, far in advance they  
24 send a subpoena out.

25 Q Couldn't have been a month before, could it?

1  
2 A I don't know how far along they would send a  
3 subpoena out.

4 Q At any rate, when you got the subpoena, as far  
5 as you were concerned you wanted to comply with it and tell  
6 the truth, is that correct?

7 A Yes.

8 Q And it was only what Stoller told you that  
9 dissuaded you from telling the truth?

10 A Yes, I was scared.

11 Q Absent Mr. Stoller, you would have gone in there  
12 like an American citizen and told them the truth, correct?

13 A Yes.

14 Q Now, sir, had you testified about this subject  
15 before you went to the grand jury?

16 A Yes, I testified in 1967 before the SEC.

17 Q And did you tell the truth then?

18 A No, sir.

19 Q Told the same lies, didn't you?

20 A For somewhat the same reasons.

21 Q You mean that there were threats against you that  
22 you didn't testify to this morning?

23 A I wasn't asked.

24 Q I see. The fact is, sir, that in 1967,  
25 November 17, 1967, now that's before you ever heard of

2 Training With The Pros, isn't it?

3 A Yes.

4 Q In November 1967 you were testifving under oath  
5 before the Securities and Exchange Commission, correct?

6 A Yes.

7 Q And you were asked;

8 "Q Did Stoller or Allen suggest that you open  
9 this account at Bank Hofmann?"

10 MR. SORKIN: What page is that, Mr. Gould?

11 MR. GOULD: Page 40.

12 MR. SORKIN: Thank you.

13 Q "Q Did Stoller or Allen suggest that you open  
14 this account at Bank Hofmann?

15 "A No, I think I decided to do that when I met this  
16 Wirth gentleman."

17 You gave that answer to that question back  
18 in 1967, didn't you?

19 A Yes, under the same --

20 Q And it was a lie?

21 A Yes, it was.

22 Q It was perjury?

23 A Yes, sir.

24 Q Correct?

25 A It was.

Q It was the same perjury that you committed in 1969 before the grand jury?

A Yes, sir.

Q It was the same perjury which you elected to commit again in 1969 after Stoller and Allen, as you tell us, urged you to take the Fifth: isn't that right?

A Yes, sir, it is the same perjury but not what I elected to do in September 1974.

Q I see.

You have reformed, is that what you are telling us?

A No, I am not afraid of the people. I am going to take my chances.

Q You are not afraid of anything, are you?

A No, I am going to tell the truth and let the chips fall where they may.

Q Are you getting anything for it?

A Not a thing. I can't imagine who would give me anything.

Q Well, sir, the fact is that you have been under investigation for income tax evasion for a good many years, haven't you?

A I have been audited but I have not ever been under investigation, as you call it, for income tax evasion.

I have been audited the same as any other businessman.

Q Has anybody suggested that you might be prosecuted criminally for income tax?

A Never.

Q The rest of my question was income tax evasion and your answer was never, correct?

Now you remember testifying before the grand jury in December 1974, don't you?

THE COURT: What was that?

Q No, no, excuse me February 1974.

THE COURT: Repeat it again so we get it.

Q You remember testifying before the grand jury in February 1974?

A Yes.

Q You remember that: and you remember this question being asked of you by Mr. Sorkin, "And am I also correct, Mr. Bonavia, that you have decided to make full disclosure about this, that you are going to declare" --

MR. SORKIN: What page? I am sorry for the interruption, Mr. Gould, but I wish you would --

MR. GOULD: You always do that. You could wait until I finish and then I will give you the page, as I invariably do.

Your Honor, I don't know why --

2 MR.SORKIN: Your Honor, I would rather read along  
3 with you as the proper method.

4 MR. GOULD: Touche.

5 I can use that.

6 Q Page 4:

7 "O And am I also correct, Mr. Bonavia, that you  
8 have decided to make full disclosure about this, that you are  
9 going to declar your taxes and pay the necessary penalties  
10 and that you are doing so without any threat or any statement  
11 by the Government that you were in fact under investigation.  
12 In other words, you made full disclosure first without being  
13 told that there was any kind of problem, is that fair to  
14 say?

15 "A That is correct."

16 You gave that answer, didn't you?

17 A I was not under investigation then, and I am not  
18 under investigation now, to the best of my knowledge. No  
19 Internal Revenue agent has contacted me.

20 Q Has anybody connected with the Government  
21 ever suggested to you that if you cooperate with the  
22 Government you will not be prosecuted for income tax evasion?

23 A In this case, I was given a letter that I would  
24 not be prosecuted for criminal, but I would have to pay my  
25 penalties and my interest.

2 Q Isn't it a fact, sir, that you were told in a  
3 letter and orally and your attorney was told that if you  
4 cooperated with the Government in this case, you would  
5 not be prosecuted criminally for income tax evasion?

6 A I'd like to say, sir, that when I came to --

7 Q Just yes or no is a pretty good answer to that,  
8 Mr. Witness.

9 THE COURT: Go ahead give your answer.

10 A I would like to say, sir, that when I came to the  
11 United States Attorney's office I came with a briefcase  
12 with all of my statements from Bank Hofmann voluntarily.

13 THE COURT: No, no, the question is in substance,  
14 and you correct me counsel, if I am wrong:

15 He wants to know whether or not the Government,  
16 through some lawyer, agent, every suggested or promised  
17 to you that if you cooperated in this Training With The  
18 Pros case they would drop any possible charges against  
19 you for tax evasion purely and simply?

20 THE WITNESS: Yes, for criminal prosecution for  
21 income tax only. I have no immunity from this court  
22 session.

23 THE COURT: In other words, you are talking now  
24 about this letter. When did you get this letter  
25 approximately, as best you recall?

THE WITNESS: Maybe March.

THE COURT: Of this year?

Q You have a lawyer out in Rockford named Cannariato?

A Yes.

Q Mr. Cannariato, right?

A Yes.

Q He is your lawyer?

A He represents -- on this case he represented me.

Q He undertook some conversations with the office of the United States Attorney on your behalf, didn't he?

A He wanted me to bring all of my records and he brought them. He carried them in the office and turned them over to the United States Attorney's office without being subpoenaed. That was his advice to me.

Q And he was the one that got you this agreement from them, isn't he?

A No, I asked if there would be -- I was so concerned about income tax because, sir, I had no access to my secret account until I got a Swiss attorney and got my folder from Bank Hofmann, and I said, "I will file an amended return but how about penalties?"



1  
2 Q Mr. Bonaiva, all I want to know is, that you have  
3 made or your attorney has made an arrangement with the  
4 Government that in return for your cooperation in this case  
5 the Government will not prosecute you criminally?

6 A For income tax.

7 Q Well, sir, you got a copy of the letter that  
8 Mr. Sorkin sent, didn't you?

9 A Well, it says for income tax.

10 Q Does it? Let's see. I am referring to 3517J.  
11 We will read this together. It says, doesn't it, that "In  
12 view of the above disclosures by Mr. Bonavia and his willing-  
13 ness to cooperate, the Government will not criminally prose-  
14 cute Mr. Bonavia, period."

15 A Mr. Gould, you are skipping the first paragraph  
16 that explains what it is. It says in the first paragraph  
17 "You are advised that, having disclosed this information to  
18 the Government, to make full disclosure to the Internal  
19 Revenue Service, declare his taxes, and pay, if required to,  
20 the necessary penalties. It should be noted that at  
21 the time of Mr. Bonavia's appearance at the United States  
22 Attorney's office, there was no independent evidence to  
23 substantiate the fact that Mr. Bonavia had a secret bank  
24 account."

25 That first paragraph is more important than the

1 mbb-2

Bonavia-cross

2 one you read. You are only running half of the tape.

3 Q I am awfully sorry, Mr. Bonavia. I am sure I  
4 have done you a great injustice.

5 Is it true that at the time that you went to  
6 the U. S. Attorney's office, there was no independent evidence  
7 to substantiate the fact that you had a secret Swiss bank  
8 account?

9 A They didn't know anything about it. I volunteered  
10 the information.

11 Q And the Government didn't know anything about it?

12 A No, sir.

13 Q I see. Well anyway --

14 A I brought a whole satchel full of papers that  
15 I pick up at Bank Hofmann.

16 Q Mr. Bonavia, when Mr. Sorkin writes in here that "The  
17 Government will not criminally prosecute Mr. Bonavia,"  
18 period, you understand that that only relates to the income  
19 tax evasion?

20 A He gave me to understand over and again that it  
21 only relates to the income tax.

22 Q That is good enough for me. I am happy with  
23 that.

24 MR. SORKIN: Would you also be happy with reading the  
25 next sentence after that, Mr. Gould?

mbb-3

Bonavia-cross

1 THE WITNESS: I think you need to read the whole  
2 letter, not just parts of it.

3 MR. GOULD: I will offer the whole letter in  
4 evidence. Why should we keep anything about this historic  
5 compact from the jury? I will offer it in evidence.

6 MR. SORKIN: I have no objection, your Honor.

7 (Defendant Stoller Exhibit R was received in  
8 evidence.)

9  
10 Q Now, Mr. Bonavia, when was it that you walked into  
11 the office of the U. S. Attorney with this satchel full  
12 of papers to make a clean breast of all of your misdeeds?

13 A I'd say February.

14 Q February 1974?

15 A February or March, yes.

16 Q I see. And at that moment, what Mr. Sorkin says  
17 here is true, there was no independent evidence to substantiate  
18 the fact that you had a secret bank account, correct?

19 A Yes.

20 Q Now, didn't you have some business with Mr.  
21 D'Onofrio during the years 1971 and 1972 and 1973?

22 A In 1971, he offered to make a stock trade with me  
23 under the conditions that Training With the Pros would be  
24 sold for \$10 the same day. That trade was not made. I  
25 have never seen nor heard from Mr. D'Onofrio since.

1

2

Q But you had business with him in '71, didn't you?

3

4

5

A No. It was only that agreement to trade stock if he would sell the Training With the Pros. He didn't sell it and there was no transaction.

6

7

Q Didn't you discuss with Mr. D'Onofrio in 1971 that you had the account in the Bank Hofmann?

8

A He knew it.

9

10

Q D'Onofrio knew you had a secret bank account at the Bank Hofmann?

11

12

13

A Sure, because he knew I had complained that I couldn't get any documents, I had never seen a record from the day it was opened.

14

Q You did complain to him about that?

15

A Yes.

16

Q Let me get that now.

17

18

A Because he was a friend of Herbert's and I thought he might help me.

19

Q When was that?

20

A From the day I first met him .

21

22

Q So in 1969, that is when you first met him, right, isn't that right?

23

A I only met Mr. D'Onofrio four times.

24

Q When was it? Give me the years.

25

A It was in January of '69, March of '69, April

mbb-5

Bonavia-cross

1 of 1971, twice.

2  
3 Q And each time you talked to him about your secret  
4 Swiss bank account, correct?

5 A I don't know if I did each time. I wouldn't say  
6 that.

7 Q Well, some of the times?

8 A I did ask him to help me, that he was a good friend  
9 of Fred Herbert's, and I explained to him that after I opened  
10 this secret account the trap door closed behind me. I  
11 couldn't see it. I couldn't get a document. I couldn't  
12 find out anything and I said, "Well, you talk to Mr. Herbert  
13 about it," and he said, "I will," but nothing came of it.

14 Q And you told him about your secret Swiss bank  
15 account at the Bank Hofmann in Zurich, right?

16 A Yes.

17 Q And you told him about Mr. Herbert, right?

18 A Yes.

19 Q And you told him how Stoller was the one who got  
20 you to open the account, right?

21 A Yes.

22 Q You told all of these things to D'Onofrio?

23 A I don't know if I got into the discussion of  
24 opening the account.

25 Q But he knew you had the account?

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A I don't want to say something that I didn't say.

Q No, I wouldn't want you to. You did tell him though that you had the account?

A Yes.

Q Now when you got this letter, when your lawyer showed you this letter from Mr. Sorkin, and it said in this letter that "At the time Mr. Bonavia appeared at the United States Attorney's office there was no independent evidence to substantiate the fact that Mr. Bonavia had a secret Swiss bank account," you thought that meant that they didn't know what D'Onofrio knew, is that right? You thought it was right?

A I haven't the slightest idea what they know, where D'Onofrio is.

Q That is right, you don't know anything about that?

A I don't even know if D'Onofrio is alive today.

Q What was that last, if he is alive?

A I say I don't even know if he is alive today. He might have had a heart attack and I wouldn't know it.

Q Mr. Stoller might have shot him too.

A I have never heard of him since 1971.

Q There is a letter, Exhibit R, I just want to read this to the jury.

(Mr. Gould read from Stoller Exhibit R to the jury.)

End 3B 25

1 gab-1 Bonavia-cross 1604  
2 Q Now, sir, has the Internal Revenue Service  
3 advised you of their final decision?

4 A No, sir.

5 Q Have you paid any of the taxes or penalties?

6 A Sir, I filed amended returns for all those years  
7 and the Government has to give me a refund in excess of  
8 \$9000.

9 Q The Government owes you money?

10 A Yes, sir. The return has been filed with return  
11 receipt attached to it.

12 THE COURT: Ladies and gentlemen, we will take  
13 the afternoon recess at this point, about five minutes.

14 (Recess.)

15 BY MR. GOULD:

16 Q Mr. Bonavia, I understood you to tell us when we  
17 recessed a little while ago that after you had been audited  
18 for the years -- which years was it, '67 and '68?

19 A I think I have been audited through '70, I believe.

20 Q Through '70, and through '70 the Government owes  
21 you \$9000, right?

22 A Yes, sir.

23 Q In spite of all of the frauds that you admitted to?

24 A Sir, I didn't admit to any frauds. I lost over  
25 \$400,000 in Training With the Pros. That was a deduction.

Q Did you not tell the Government that you had a Swiss bank account which contained unreported taxable income?

A Yes.

Q That is a tax fraud, isn't it?

A Well, sir, I am not a lawyer, but my certified public accountant tells me that you can file an amended tax return at any time and there isn't any criminal charge. It is just penalties and interest. If you voluntarily file an amended return, there isn't any penalty anyway, and I don't know. He is not an attorney either, but he knows tax law and he tells me that the letter that the U. S. Government gave me meant nothing.

Q But this letter doesn't mean anything, Stoller Exhibit R?

A He said that I was not subject to any criminal charge anyway if I voluntarily filed an amended tax return on my own discretion.

Q Did Mr. Sorkin confirm that when you discussed it?

A No, sir, Mr. Sorkin gave me no legal advice.

Q You didn't discuss that with him?

A No, sir.

Q How about perjury, you committed perjury, didn't you back in 1969?

A Yes, sir, and in 1967 too.



2 Q You haven't been prosecuted for that, have you?

3 A No, sir.

4 Q Do you expect to be?

5 A I don't have any immunity from it.

6 Q I see.

7 Your accountant didn't advise you about that, did  
8 he?

9 A I didn't discuss that with him. I only discussed  
10 taxes with my accountant.

11 Q Let me understand something. As far as you knew,  
12 when you went in to see the Government in February 1974,  
13 you had not violated any laws, correct?

14 A I knew that I committed perjury in 1967, in 1969.  
15 As far as violating laws in Switzerland, what information  
16 the bank would give me I filed tax on. What they wouldn't  
17 give me, I had no knowledge of and I did everything to get  
18 it and I finally hired a Swiss attorney to get it.

19 Q When you went in to Mr. Sorkin's office in February  
20 1974 to make a clean breast of things, as you put it, you did  
21 not know that you had violated any tax laws, is that correct?

22 A Income tax laws?

23 Q That's right.

24 A I knew that I had to file an amended return. I  
25 had engaged an attorney in Chicago, Illinois to do that for

gab-3a

Bonavia-cross

me. However, my records were tied up in the Swiss Courts  
and the attorney in Chicago was waiting for tecords.

I voluntarily brought my records in to the U. S.  
Attorney's office in New York. They were not subpoenaed.

End 4A

1 gwrf 4b pm gwrf 1 Bonavia-cross

2 Q Mr. Bonavia, when you voluntarily brought your  
3 records to the United States Attorney's office in New York,  
4 the only crime that you knew that you could possibly be  
5 charged with was perjury; isn't that right?

6 A I would say that is correct.

7 Q You had no reason to be concerned about an income  
8 tax violation?

9 A We were in the process of filing an amended return  
10 when I went there.

11 Q But it didn't even cross your mind, your  
12 accountant told you that there was no susceptibility to  
13 criminal prosecution, that is correct?

14 A That is what he tells me, but he is not an  
15 attorney.

16 Q How about your lawyer?

17 A I didn't consult with my lawyer.

18 Q What?

19 A I didn't consult with him. I don't have a lawyer  
20 in this case.

21 Q You didn't discuss that with Mr. Cannariato?

22 A No, sir.

23 Q How about the lawyer in Chicago, did you discuss  
24 it with him?

25 A I told him and notified the Swiss attorney that

1 qwrf 2 Bonavia-cross

2 as soon as he could get my records from the Swiss courts,  
3 that he was to send them direct to the attorney in Chicago  
4 for amended tax returns.

5 Q So I'm right, am I not, that as far as you were  
6 concerned, when you walked into the United States Attorney's  
7 office in February 1974 the only crime that you had any  
8 concern about was the perjury that you committed in  
9 '69; isn't that right?

10 A I didn't think of that, but that would have been  
11 the only crime.

12 Q Let me ask you something.

13 As far as your income tax returns are concerned,  
14 you filed them out in Rockford, Illinois, don't you?

15 A Yes, sir.

16 Q They go to the Internal Revenue Service in Chicago,  
17 don't they?

18 A Kansas City.

19 Q Kansas City.

20 You didn't bring your records to them, did you?

21 A I mailed them with the return receipt requested  
22 and I have a copy of the return with return receipt on it.

23 Q Why did you bring the records into the United  
24 States Attorney's office in New York?

25 A Just -- he didn't ask for it. What do you mean, the

1  
2 Q Your tax records?

3 A I can't. I have to file in my own district.  
4 My accountant told me that.

5 Q Mr. Bonavia, when you came in to see Mr. Sorkin  
6 back in February, you brought a bag with you, didn't you?

7 A Yes, sir, all of my Swiss account records.

8 Q That's right.

9 You didn't know that they were investigating  
10 that subject at all, did you?

11 A No, but I wanted to give them to him.

12 Q Voluntarily?

13 A Yes.

14 Q Nobody asked you to come in?

15 A Yes.

16 Q Nobody had approached you, right?

17 A Oh, I got a subpoena.

18 Q You got a subpoena from whom?

19 A From the United States -- Curran, who is the United  
20 States Attorney? I don't know.

21 Q You mean you got a subpoena before you made this  
22 full breast, this disclosure?

23 A But the subpoena didn't ask for any Swiss records.  
24 I brought them voluntarily.

25 MR. GOULD: May we see the subpoena that was

1 gwrf 4

Bonavia-cross

1610

2 served on him when he voluntarily came in?

3 MR. SORKIN: I would be happy to get it. It is  
4 probably in my office. Again, we are back to running down.  
5 I don't have it here.

6 MR. GOULD: I will go to another subject, your  
7 Honor. When they produce it, we will come back to this  
8 subject.

9 THE COURT: All right.

10 MR. GOULD: I will ask your Honor outside the  
11 presence of the jury, in view of these circumstances, to  
12 invoke the rule that we discussed with respect to the  
13 Witness D'Onofrio. You understand.

14 MR. SORKIN: I certainly do and will honor that  
15 rule.

16 MR. GOULD: Thank you, very much.

17 So I will drop the subject, his appearance at the  
18 United States Attorney's office, until the subpoena comes  
19 down.

20 O Just one question on that and I will pass from  
21 it.

22 When you did come into the United States Attorney's  
23 office in February of 1974, did you know that Mr. D'Onofrio  
24 was cooperating with the Government? Yes or no.

25 A No, sir, I didn't.

2 Q Thank you very much.

3 Let me go back to your testimony. I'm talking  
4 about your grand jury testimony on December 11, 1969.

5 MR. GOULD: And I refer to questions, Mr. Sorkin,  
6 I will give you in advance the page to which I'm referring.

7 MR. SORKIN: Thank you.

8 THE GOULD: Page 17.

9 Q You remember, sir, you were asked about how you  
10 met Mr. Stoller? Do you recall that? If you don't, say  
11 you don't.

12 A I don't recall that.

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2 BY MR. GOULD:

3 Q You remember testifying that you first met  
4 Mr. Allen at a company called Rubin Rose & Company,  
5 correct?

6 A I think I did testify to that.

7 Q I advise you you did.

8 Mr. Sorkin, I am sure, will join with me so we can  
9 save some time.

10 Now, how did you come to go to Rubin Rose &  
11 Company?

12 A I went to Rubin Rose & Company because Mr. Ellman  
13 was working there.

14 Q In other words, you just didn't walk in off the  
15 street, did you?

16 A No.

17 Q You remember being asked this question and giving  
18 this answer:

19 "Q Did you just walk in off the street to the Rubin  
20 Rose Company," and then you answered, "Yes, and many other  
21 brokerage firms, companies, I did too."

22 Did you give that answer to that question?

23 A Yes, I did.

24 Q A lie?

25 A Yes.



2 Q Right. And you told us a little while ago that  
3 you went to Rubin Rose & Company because Mr. Allen was  
4 there, correct?

5 A Yes.

6 Q Do you remember being asked this question:

7 "Q Mr. Allen was just coincidentally there?

8 "A Yes, and I knew him through the -- I had met  
9 him once before through his market letter when I was in  
10 New York, as I said, I believe, in '69 or '60. My wife  
11 and I were there, and I called him and I had never met him,  
12 and he came down to the hotel, and I had coffee with him  
13 and a 15-minute meeting and that was the first time I met  
14 him."

15 But you will agree with me that your answer that  
16 Mr. Allen just happened to be there or was coincidentally  
17 there, that was a lie, right?

18 A Yes, I told you why I lied too.

19 Q And that was one of the questions that you had  
20 been prepared for by Mr. Stoller and Mr. Allen before you  
21 went there?

22 A Yes, sir.

23 Q They anticipated that, correct?

24 A Yes, sir. I might comment, sir, you mentioned  
25 my meeting Mr. Allen for the first time in the Roosevelt  
Hotel in 1969. That is true. I don't know if you are

2 indicating it wasn't.

3 Q I am just asking a few little questions.

4 A I just wanted to clarify it.

5 Q When you went to Rubin Rose & Company, did you  
6 know that Mr. Stoller was connected with the company?

7 A Not in my first trip, no, I didn't know Mr. Stoller  
8 then.

9 Q When you walked into Rubin Rose, did you have any  
10 idea that he was associated with Rubin Rose?

11 A I had never heard his name.

12 Q I see, so you met him for the first time when  
13 you went into -- into the office of Rubin Rose?

14 A Yes, that's right.

15 Q By the way, you told us a little while ago about  
16 your experience in the securities business. How long have  
17 you had brokerage accounts?

18 A Since I have known Mr. Allen.

19 Q Not before that?

20 A Oh, very small. I might buy 200 shares of  
21 Packard Motor Car Company when I was a dealer.

22 Q And didn't you have an account in a firm in  
23 Chicago long before you knew them, before you knew Stoller  
24 and Allen?

25 A No.

2 Q Didn't you have an account with Hornblower?

3 A I had an account with Hornblower in Rockford.

4 Q In Rockford, I see. That was before you ever met  
5 these fellows, wasn't it?

6 A Oh, five years, but it was --

7 Q Five years before you met them?

8 A Yes, but very inactive. I did very little trading.

9 Q And did you have an account in Canada?

10 A Mr. Stoller took me to L. J. Fourget to open  
11 an account.

12 Q How many brokers in New York have you done business  
13 with ?

14 A All of the brokers that Mr. Stoller has done busi-  
15 ness with, I would say. I don't know any that he knows  
16 that he didn't take me to. There might be some; I don't  
17 know.

18 Q Well, it would be only two or three, wouldn't it?

19 A Oh, I could name Rubin Rose, Hancock Securities,  
20 Weis, Voisin & Cannon, Bregman Companies, Francis duPont,  
21 Krolli Dallon. If I have my records here I could probably  
22 name you another ten or fifteen.

23 Q Well, the only brokers you did business with  
24 in New York were the brokers that Stoller referred you to,  
25 right?

2 A Yes, sir.

3 Q He didn't steer you to 25 of them, did he?

4 A That might be a little -- a few more but not many  
5 more.

6 Q Not many? Well you remember being asked this  
7 question:

8 "Q Who was the one who steered you to Rubin Rose?"

9 This is page 17 of this grand jury testimony.

10 "Q Who was the one who steered you to Rubin Rose?

11 Did you just walk in?

12 "A Oh, I have done business with probably 25 brokers.  
13 in New York, and I don't think anyone steered me to any of  
14 them. I am like anyone else. I am trying to make  
15 a living, and I have tried to find a broker that might  
16 find a stock that pays dividends or has appreciation. I  
17 haven't had any luck with that in the midwest and I tried  
18 New York. I came to New York, and I went stumbling  
19 up and down the Street trying to find somebody that knew  
20 a little bit about the market."

21 Did you give that answer to that question?

22 A I answered it exactly as Mr. Stoller told me to,  
23 yes.

24 Q You mean Stoller told you to give that answer?

25 A Yes, sir.

2 Q Did he tell you the part about stumbling up  
3 and down the Street, put that in your mouth?

4 A Yes, he said not to say he took me to any brokerage  
5 firms.

6 Q I know, but this stuff here about stumbling up  
7 and down the Street, Stoller's invention or your invention?

8 A Oh, I don't remember that. That's -- seven or  
9 eight years ago.

10 Q You remember.

11 A I said stumbling. He probably said wandering.  
12 I don't know. It all meant the same thing.

13 Q That was after the stuff you told us about this  
14 morning, wasn't it? This is 1969, wasn't it, December 1969?

15 A I thought you were in 1967.

16 Q I just told you I am reading from your grand jury  
17 testimony in 1969.

18 A That doesn't make any difference. I gave the answers  
19 he gave me in both of them anyway.

20 Q All I want to know is whether Stoller told you  
21 to say that you hadn't had any luck with that in the Midwest  
22 and you tried New York and you came to New York and went  
23 stumbling up and down the Street trying to find somebody  
24 that knew a little bit about the market.

25 A Yes, he told me to say that. He might have not

1 mbrf 7 Bonavia-cross 1618  
2 worded -- used the word stumble. He might have said  
3 wandring up and down the Street. I don't know.  
4 Q Well, anyway, it was all a lot of lies, wasn't  
5 it?  
6 A Yes, it was.

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Q Then you were asked again about Mr. Allen:

"Q Mr. Allen was just coincidentally there?"

You remember that?

You said, "Yes, and I knew him through the -- I had met him once before through the market letter."

You remember that answer, right?

A Yes.

Q That is the one I asked you about before.

Now here:

"Q What was your relationship with Mr. Allen and Mr. Stoller during that period? Was it one where they just gave you investment advice and you had an informal kind of relationship along these lines?

"A I'd say it was that, yes."

Did you give that answer to that question?

A I gave the very answer --

Q Was that truthful?

A I gave the answer he told me to. It was not true.

Q He told you to say that, right?

A Yes, sir.

Q How often during this period from 1965 on until you terminated the relationship did you speak to Stoller and Allen?

A Oh, personally in New York probably three times

mbb-2

Bonavia-cross

a month. Over the phone every day or every other day. Maybe two or three times a week, depending on what stocks he had or what he wanted to tell me.

Q You spoke to him more than once a month, didn't you?

A I said I came to New York an average of three times a month, plus the telephone calls.

Q So you spoke to them more than once a month?

A Oh, yes.

Q So when you were asked this question, Page 19:

"Q How often did you speak to them during the period?

"A Oh, of course I am looking back ten years ago.

I don't know. I wouldn't say my association and my contact was a close one at that time, or is it now. I don't recall how often I spoke to the man. It is ten years ago. It is a long time.

"Q Did you speak to them every month? Did you speak to them once a month? Did you speak to them once a year?

"A I hazard a guess and say once a month."

Did you give those answers to those questions?

A Exactly as he told me to, yes.

Q Any time you told a lie it was what Stoller told you to tell?



1 mbb-3

Bonavia-cross

2 A Yes, sir.

3 Q Correct? But it was a lie?

4 A He told me not to remember, and not to associate  
5 myself very close to him in business.

6 Q But he also told you to take the Fifth rather  
7 than lie, didn't he?

8 A He mentioned I had a choice of the Fifth or this.

9 Q And it was your choice, take the Fifth or lie, and  
10 so on this one you elected to lie, right?

11 A I don't see where the Fifth would have done me any  
12 good, but --

13 Q I see.

14 A -- bring out the truth.

15 MR. GOULD: Would you read the end of the answer?  
16 Mr. Alenstein says I cut him off. I wouldn't dream of it.

17 THE COURT: I don't understand what you are  
18 talking about. What has Mr. Alenstein got to do with this?

19 Next question.

20 MR. GOULD: He said that I didn't hear the answer  
21 so may I just have the end of the answer?

22 THE COURT: If you didn't hear it, fine, I will  
23 certainly allow it.

24 MR. GOULD: That is all.

25 THE COURT: All right.

mbb-4

Bonavia-cross

MR. GOULD: He says he doesn't think I heard it.

THE COURT: All right.

(Record read.)

Q You mean that your taking the Fifth would not have done any good to bring out the truth?

A It would have brought down the threat on my life.

Q It would have what?

A It would have brought down the threat on my life.

Q You weren't concerned about the truth, were you, in any way?

A Well, the Fifth Amendment would eventually have brought out the truth.

Q And you didn't want the truth to come out, isn't that right?

A I didn't really care, but somebody else did.

Q You didn't give a hoot, correct?

A I cared for my life.

Q You were perfectly satisfied to go in and commit the perjuries is that right?

A No, sir. That is not correct.

Q I am reading now from Page 20 of the grand jury testimony in 1969:

"Q At any time did you ever pay Mr. Allen and Mr.

1 mbb-5 Bonavia-cross<sup>s</sup>  
2 Stoller a fee for any investment advice they may have given  
3 you?

4 "A Yes. I don't have my records here, but I paid  
5 a fee, I believe last year, an advisory fee."

6 Did you give that answer to that question?

7 A Yes, sir.

8 Q True or false?

9 A False.

10 Q And then you were asked:

11 "Q What was that in connection with?"

12 "A Oh, just stocks in general, I think a stock they  
13 recommended to me was General Numismatics. I think the  
14 name, the new name is Franklin Mint."

15 Did you give that answer to that question?

16 A Yes, sir.

17 Q Another lie, right?

18 A No, sir, it is true.

19 Q You mean that you paid them the fee on just stocks  
20 in general?

21 A You are talking about 1969?

22 Q I am talking about your answer to the question.

23 A This is 1969?

24 Q That's right.

25 A Yes, sir, I paid them a fee on General Numismatics.

1 mbb-6

Bonavia-cross

2 Q So it is not false, it is true?

3 A I said it was true.

4 MR. SORKIN: Your Honor, I am not really voicing  
5 an objection. I just want to ask Mr. Gould if he intends  
6 to go into General Numismatics. I think we have a problem  
7 that came up with Mr. D'Onofrio and Mr. Gould knows what we  
8 are talking about.

9 MR. GOULD: I am just reading the questions and  
10 answers.

11 MR. SORKIN: All right.

12 THE COURT: Go ahead.

13 Q Now sir, how many times did you say you met Mr.  
14 D'Onofrio?

15 A Four times, as I recall it.

16 Q How many times before December 1969 had you met  
17 Mr. D'Onofrio?

18 A Once.

19 Q When was that?

20 A That would have been in January, my first trip  
21 to T raining With the Pros' office.

22 Q When you testified before the grand jury on  
23 December 11, 1969, you were asked:

24 "Q Did you deal with Ramon D'Onofrio?

25 "A I met Mr. D'Onofrio the last time I was in New

mbb-7 Bonavia-cross

York. I just happened to meet him."

That wasn't true, was it?

A This was the 1969 testimony?

Q This was December 1969.

A Yes, I answered as I was instructed to answer.

Q In other words, it was a lie?

A Yes, sir.

Q And that was another lie that Stoller told you to tell?

A Yes, sir.

MR. SORKIN: Your Honor, excuse me, I have a copy of Mr. Bonavia's subpoena I am going to turn over to Mr. Gould.

(Mr. Sorkin handed a paper to Mr. Gould).

MR. GOULD: What is the date of that subpoena?

MR. SORKIN: It was mailed October 1.

MR. ALLENSTEIN: 1973?

MR. SORKIN: That is correct.

MR. GOULD: Let me go ahead with this, your Honor.

Q You were then asked:

"Q How recently was this meeting in Mr. Allen's office where you met Mr. D'Onofrio at 118 East 60th Street, roughly? How many months ago? How many weeks ago, whatever it was?

mbb-8

Bonavia-cross

"A I'd say roughly five weeks ago. I have never done any business with Mr. D'Onofrio. In fact what you said here is the first time I knew he was ever in the brokerage business, if he is."

Did you give that answer to those questions?

A Yes, sir, I was told not to mention anything of Training With the Pros or Mr. D'Onofrio.

Q So that was your way of telling that lie, right?

A It was the way they told me to tell the lie.

Q By the way, when you went in to the grand jury you didn't have any notes with you, did you?

A No, sir.

Q Just you remembered what they had told you in your head?

A Yes, sir.

End 5B

Tk 6A

gab-1

Bonavia-cross

1 gab-1 Bonavia-cross  
2 Q By the way, you told us, didn't you, that  
3 Stoller knew that you had received the grand jury subpoena?

4 A In 1969?

5 Q Yes.

6 A Yes, he called me before I received it, and I re-  
7 ceived it the same day.

8 Q Did he tell you how he knew that there was going  
9 to be a grand jury?

10 A No, sir.

11 Q He knew it was coming --

12 A Yes, he said he thought I received it. I said  
13 "No, I did not receive a subpoena."

14 He said, "You are going to get one."

15 In the mail that same day I got it.

16 Q Let me go to something else in this grand jury  
17 testimony. This is Page 28.

18 "Q On this General Numismatics deal" -- that is the  
19 same as Franklin Mint?

20 A Yes, sir.

21 Q "You said you paid Mr. Allen a fee. How much  
22 was that fee?"

23 A I don't know.

24 Q That is the question that is here. I am going to  
25 read your answer.

1 gab-2

Bonavia-cross

2 A This is --

3 Q Excuse me. I am sorry. I have confused you,  
4 Mr. Bonavia. Let me start over. I am reading from your  
5 grand jury testimony on December 11, 1969, Page 28. You  
6 were asked this question:

7 "Q On this General Numismatics deal you said you paid  
8 Mr. Allen a fee. How much was that fee?

9 "A I don't recall exactly, but it seemed \$6000."

10 Did you give that answer to that question?

11 A I am sure I did.

12 Q And that was a lie?

13 A Yes, sir.

14 "Q Was that a set thing before you got this General  
15 Numismatics deal or was that --

16 "A I had made an agreement with them because my  
17 experience in the stock market has been so lousy. I thought  
18 I had to have some expert advice and I would be willing to  
19 pay for it. I respect his judgment. I think he knows what  
20 he is talking about. He has always been honest and a  
21 gentleman with me, and good men don't come cheap and I am  
22 willing to pay \$6000" --

23 MR. SORKIN: "I was willing."

24 Q "And I was willing to pay \$6000 if I made a  
25



1 gab-3

Bonavia-cross

2 certain amount of money and I made more than that minimum. "

3 That is the answer you gave?

4 A That sentence was given to me word for word and  
5 I was told to emphasize that.

6 Q You mean they wrote it out for you?

7 A They made -- they had me repeat it and told me  
8 to emphasize that they were nice fellows.

9 Q How about the stuff about the \$6000, did they tell  
10 you to say that?

11 A Yes, because he said that is what they paid on  
12 their income tax.

13 Q Who told you that?

14 A Stoller.

15 Q He told you he paid income tax on \$6000?

16 A Yes.

17 Q You remember that very distinctly, don't you?

18 A Because he gave me the figure and he "don't forget  
19 that figure."

20 Q Then you were being asked at Page 31:

21 "Q Why did you give the check to Mr.Stoller, if you  
22 did?

23 "A Well, I don't know if I gave it to Mr.Stoller.  
24 I have great respect for the judgment of both of them."

25 Did you give that answer to that question?

1

2

A Yes, sir.

3

4

Q You gave that answer after you had the threats from Stoller, correct?

5

A Yes, sir.

6

7

8

Q And after you learned that Stoller, as you told us this morning, had lied to you about putting the Training With the Pros stock in your account?

9

A Yes, sir.

10

11

12

13

Q By the time you made the statement in which you said you had great respect, as you said under oath, you had great respect for both of them, in your judgment, Mr. Stoller was a liar, right?

14

15

A Deep inside of me I felt entirely different than what I felt I was forced to say.

16

17

Q What you really felt deep inside of you, you know --

18

19

A Deep inside of me I felt absolutely opposite about him as what I was forced to say.

20

21

22

23

24

25

Q You felt you were forced?

A Yes, sir.

Q Stoller wasn't in the grand jury room, was he?

A No, but I wasn't worried about the grand jury room, I was worried when I got out of there.

Q I see. You knew he was a liar, didn't you?

1 gab-5

Bonavia-cross

2 A I knew Stoller was a liar, yes.

3 Q You knew he was a crook, didn't you?

4 A At that point, yes.

5 MR. SORKIN: I didn't hear the rest of his answer,  
6 Mr. Gould, I am sorry.

7 MR. GOULD: I do that all the time. I am sorry.  
8 I didn't hear it either.

9 MR. SORKIN: I think the question was he knew he  
10 was a crook.

11 Q You knew he was a crook?

12 A Yes, sir.

13 Q And you knew he was a thug, a man of violence?

14 A Sir, I have more reason to be afraid of a crook  
15 or a thug than I do of an honest man.

16 Q You don't know any other crooks or thugs than  
17 Stoller, do you?

18 A I would count him amongst them.

19 Q Have you had business with crooks and thugs other  
20 than Mr. Stoller?

21 A Not that I know of.

22 Q So your whole experience in this kind of thing  
23 is limited to your encounter with Mr. Stoller?

24 A After he did with me what he did with me with  
25 Training With the Pros, I knew he would do anything.

gab-6

Bonavia-cross

1  
2 Q Do you have pinball machines in those bowling  
3 alleys?

4 A I have never thrown a ball in my life.

5 Q Have you ever been in one of your bowling alleys?

6 A Just once a month.

7 Q Do you ever notice the pinball machines in there?

8 MR. SORKIN: Objection. What is the difference  
9 whether there is a pinball machine in Rockford?

10 THE COURT: Let's put another question.

11 Q You don't want to answer that question?

12 A I will answer it, sir. Do you want me to answer  
13 it?

14 Q If his Honor will permit the answer, I will be  
15 glad to have it.

16 THE COURT: We have gone this far. I am now  
17 dying of curiosity.

18 Do you recall any pinball machines --

19 THE WITNESS: Sir, I have managers that sign checks,  
20 do the hiring and the firing, and when a girl has a financial  
21 statement ready that shows profit or loss, the manager calls  
22 me and I go in and sit down with him and look it over and  
23 see if there is room for any improvement and that's my  
24 extent of activity in the bowling business.

25 Q I could have sworn I asked him if he has pinball

gab-6a

Bonavia-cross

machines.

A Yes.

Q That is all I want to know. Thank you.

MR. GOULD: Bear with me, your Honor. I am  
trying to abbreviate this.

(Pause.)

End 6A

1 6b pm qwrf

Bonavia-cross

1633

2 Q By the way, you had an account at something  
3 called Dishy, Easton & Company, didn't you?

4 A Yes.

5 Q Is that a brokerage firm?

6 A I understand it was.

7 Q Where was it?

8 A It was downtown.

9 Q It was not one of the firms you mentioned before,  
10 was it, where Stoller steered you in?

11 A No, there was many besides the ones I mentioned.

12 Q Dishy, Easton was one of them, right?

13 A Yes.

14 Q And you were asked:

15 "Q Did you give Mr. Stoller or Mr. Allen any authority  
16 to trade your account at Dishy, Easton & Company?

17 "A Only if I tell them on the phone. I maybe told  
18 them to place an order or maybe I called them direct, but  
19 they don't have any authority to trade my account without  
20 my permission."

21 Did you give that answer to that question?

22 A Mr. Stoller specifically emphasized that because  
23 he said Bernie Dishy was in trouble and please don't  
24 associate me with him.

25 Q Who was in trouble?

1 gwr f 2 Bonavia-cross 1634  
2 A Bernie Dishy.  
3 Q Did you know anything about that?  
4 A I didn't know -- I never met the man.  
5 Q So you said -- you gave this answer which wasn't  
6 true, was it?  
7 A No, I answered it as I was told. It was a lie.  
8 Q Perjury?  
9 A Yes, sir.  
10 Q "Q Did you ever give them--" Stoller and Allen  
11 --"a written power of attorney to trade your account at  
12 Dishy, Easton & Company?"  
13 MR. GOULD: Page 60.  
14 Q "Q Did you ever give them a written power of  
15 attorney to trade your account at Dishy, Easton & Company?  
16 "A Yes. I don't know about Dishy, Easton.  
17 "Q Have you ever given them written powers of attorney  
18 to trade in your accounts at other brokerage firms?  
19 "A I'm sure I have, although they haven't done it,  
20 they have never exercised that power."  
21 Did you give those answers to those questions?  
22 A Yes, sir.  
23 Q Did they tell you to lie about that?  
24 A Yes, sir.  
25 Q They told you to say that they had never exercised

1635

25                   A     They told me --



Q You knew when you told that lie that that was a dumb lie, wasn't it?

A Well, I don't know if I ever gave power of attorney or not. I still don't know.

Q In other words, it may have been wrong that you gave them powers of attorney?

A Well, I didn't read the fine print at a brokerage firm when I opened an account. Maybe there was a power of attorney there, I don't know. There very well could have been.

Q When you were examined in 1969, page 75:

"Q How long have you had your account at the Bank Hofmann?

"A I'm quessing, but I would say three years."

That was a lie, too, wasn't it?

A Well, I opened it sometime in 1965. It is all on my Internal Revenue record. There is nothing to lie to the Government. They have a record of it.

Q What was that?

A I say all of my transactions from 1965 would be reported in my Internal Revenue reports.

Q Why did you tell the Government, the grand jury, in December of 1969 that you had the account there three years?

1 qwrf 5 Bonavia-cross 1637

2 A Well, it might have been three and a half years.

3 I opened it in 1965.

4 Q Stoller didn't tell you to say three years?

5 A I could have looked and said it was three years,

6 251 and a half days, and be accurate, but I just

7 picked a round figure.

8 Q "Q How long had you had your account at the

9 Bank Hofmann?

10 "A I'm guessing, but I'd say three years."

11 You gave that answer, right?

12 A Yes, sir.

13 Q That --

14 A That was close.

15 Q When was the Barbin account opened?

16 A Well, if I wanted to end up in the East River,

17 I could have told him about that.

18 Q Did anybody threaten to throw you in the East

19 River?

20 A I was told that is where I would end up.

21 Q Who told you that?

22 A Stoller.

23 Q Which conference did he use the term East River?

24 A In 1959.

25 Q '59?

A Yes. In 1957 he didn't threaten me.

MR. SORKIN: '57?

THE WITNESS: '67 I meant to say.

MR. GOULD: Mr. Sorkin, please.

MR. SORKIN: Will you concede, Mr. Gould, he testified to '67?

MR. GOULD: Right now he said '59 --

THE COURT: Gentlemen, the jury and the Judge will absorb all of this without any more infighting on this subject.

Next question.

Q When was Barbin opened?

A 1968.

Q A year before you testified?

A Yes, sir.

Q So when you answered:

"A I'm guessing, but I'd say three years," that certainly was a lie about the Barbin account, right?

A Yes, sir, it was.

Q You did that because you were in terror, correct?

A They told me they had 50 to 60 clients and I was not to destroy their career.

Q Question page 73. Before I read that, do I understand that you did have some conversations with a number of

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Bonavia-cross

1639-1640

people about the advantages of having a Swiss bank account?

A Stoller, Allen and Mr. Herbert.

Q Mr. Who?

A Herbert.

Q How about Wirth, you talked to Wirth, didn't you?

A He talked some of Swiss bank accounts, but he  
didn't mention Bank Hofmann as I recall it.

1 mbrf 2 Bonavia-cross

1641

2 A No, sir.

3 Q Why didn't you tell him about Mr. Wirth? He was  
4 a perfectly respectable citizen.

5 A I hadn't seen Mr. Wirth for six years before I  
6 opened my Swiss account.

7 Q You saw Mr. Wirth in 1965?

8 A 1960.

9 THE COURT: I don't even know where Dr. Wirth  
10 went. I never saw a Bank Hofmann --

11 Q Anyway, they didn't tell you to say Wirth told  
12 you about it, right?

13 A They told me to say Wirth was the one that intro-  
14 duced me to Swiss banking.

15 Q Now, sir, you knew when you went into testify  
16 before the grand jury that Allen and Stoller had accounts  
17 at the Bank Hofmann, didn't you?

18 A Yes, sir.

19 Q And you were asked this question:

20 "Q Does Mr. Allen and Mr. Stoller have any account  
21 at the Bank Hofmann as far as you know?

22 "A I wouldn't have any idea."

23 You gave that answer?

24 A Yes, the answer was --

25 Q And that is a false and perjurious answer, correct?

1 mbrf 3 Bonavia-cross 1642

2 A Yes, sir.

3 Q And you gave it because they told you to give it?

4 A Yes, sir.

5 Q And they threatened that if you didn't give it,

6 they would kill you?

7 A Yes, sir.

8 Q Really, they threatened that if you didn't give

9 it D'Onofrio would kill you, correct?

10 A They or D'Onofrio.

11 Q Who was going to throw you in the East River,

12 Stoller or D'Onofrio?

13 A He just said that he would see that I would be

14 thrown in the East River, that I would not leave New York

15 alive.

16 Q And you believed that?

17 A He did emphasize strongly as he told me many

18 times, that D'Onofrio was a killer.

19 Q You believed it when they told you these things,

20 correct?

21 A I never had my life threatened before and it

22 didn't go -- sit very good with me. I still don't like it.

23 Q You were in terror, were you not?

24 A Yes.

25 Q You were in such terror that you went in and

2 committed all these perjuries before the grand jury, correct?

3 A Yes.

4 Q And you had been in the same degree of terror  
5 when you had committed your perjuries before the SEC  
6 in 1967?

7 A Yes, sir.

8 Q Correct?

9 Did you ever go to the police and tell them that  
10 you were being terrorized by these thugs?

11 A No, I didn't.

12 Q Did you ever go to the United States authorities  
13 and tell them that you were being terrorized by these  
14 gangsters, thugs, men of violence?

15 A I had the FBI come and inquire about Phil Stoller  
16 from being several years ago and I told them things  
17 that I knew and they didn't do anything about it so I  
18 felt why bother with this.

19 Q Did you tell the FBI some years ago that he had  
20 threatened you if you didn't commit perjury?

21 A I don't remember just what I told the FBI but they  
22 asked me about Mr. Stoller and I told them that I thought --

23 Q When was this?

24 A Probably in 1968.

25 Q In 1968, it is your sworn testimony here, that

1 mbrf 5 Bonavia-cross 1644  
2 the FBI interviewed you about Mr. Phil Stoller?  
3 A No, I didn't say 1968 exactly.  
4 O I thought you did say 1968.  
5 A I said somewhere around there, at that time.  
6 Q Well, somewhere around would be --  
7 A I didn't write the date down. It's been several  
8 years ago.  
9 O Was it '67?  
10 A I didn't write the date down: and time goes by  
11 fast. I could be wrong by two or three years if I were  
12 to give you a date.  
13 O Why, Mr. Bonavia, you sat here and in response  
14 to questions you repeated verbatim what was said in 1969;  
15 didn't you?  
16 A I am sure you can get the FBI record. I told  
17 them --  
18 Q Mr. Bonavia, this is not a debate and his Honor  
19 is going to get sore at both of us in a moment. You just  
20 told us that you were interviewed by the FBI about  
21 Mr. Phil Stoller around 1968. Yes or no.  
22 A It was several years ago; yes.  
23 Q Between 1968 and now, correct?  
24 A Yes.  
25 O It wasn't last year, it wasn't -- was it before



1 you testified in the grand jury or after you testified  
2 in the grand jury?

3  
4 A I don't know.

5 Q What was the name of the agent that interviewed  
6 you?

7 A Frank Roseboro.

8 Q Frank Roseboro. And did you tell him that you  
9 were being threatened by Mr. Stoller?

10 A I told him what I thought of Mr. Stoller and  
11 I told him that Mr. Stoller was an animal.

12 Q Where did this interview take place?

13 A It is taken under oath, taken in my office at  
14 Rockford, Illinois.

15 Q When?

16 A Now we are back to that again.

17 Q Yes, we are indeed, aren't we.

18 A Between 1968 and the present. I think that was  
19 the way you put it.

1  
2 Q In that were you asked anything about Swiss bank  
3 accounts?

4 A I don't remember.

5 Q What were you asked about?

6 A It was questions about Mr. Stoller.

7 Q Just Mr. Stoller?

8 A Yes.

9 Q Just in a general way, what kind of fellow he is,  
10 is that it?

11 A They come to ask me what I knew about Mr. Stoller.

12 Q And did you tell them what you knew about Mr.  
13 Stoller?

14 A I told them what -- from the questions that  
15 they asked me.

16 Q Did you ever tell the FBI that Stoller threatened  
17 to kill you?

18 A I was told to answer the questions. It was being  
19 recorded, and answer the questions asked, and that is what  
20 I did.

21 Q And it was recorded?

22 A Yes, sir.

23 Q Was it recorded on a machine?

24 A Yes, sir.

25 Q A tape recorder?

mbb-2

Bonavia-cross

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A Yes, sir.

Q You remember that?

A Yes.

Q Was he alone or were there two of them?

A I don't recall that.

Q Was it in your office?

A Yes, sir. There were probably two.

Q You were examined in your lawyer's office once,  
weren't you?

A For what? I don't --

Q Mr. Bonavia, do you remember being asked or making  
a sworn statement on April 23, 1974, in Rockford, Illinois?

A If I made a sworn statement it was for Dr. Stucki  
who is Attorney Stucki in Zurich, Switzerland.

Q I just asked you whether you remember back in  
April of this year making a sworn statement about Training  
With the Pros back in April 1974, at the office of Sam J.  
Cannariato?

A Yes.

Q You remember that?

A Yes.

Q That wasn't an FBI agent, was it?

A No. It was a court reporter. I asked to have  
that done.

mbb-3

Bonavia-cross

1  
2 Q How many statements did you make back in April?

3 A I believe there were six. There was a statement  
4 as to the whereabouts of Muir Weissinger, if I had any know-  
5 ledge, a statement that when Allen called me that Mr. Frank  
6 and Mr. Stoller just got back --

7 MR. FELDSHUE: Would you keep your voice up?

8 A One statement concerned a telephone call from  
9 Mr. Allen that Mr. Frank and Mr. Stoller --

10 Q Well, I didn't ask you what the statments were,  
11 did I? I just asked you how many you made.

12 A I understood you to say what were the statements.

13 Q You understood that from me? I didn't ask you  
14 that.

15 THE COURT: IN any case what is the question?

16 Q The question is how many statements you made.

17 A I am not sure.

18 Q This year, 1974.

19 A I amnot sure, but I believe six. It could have  
20 been --

21 Q Were they made for the FBI?

22 A No, sir.

23 Q The FBI didn't have anything to do with them?

24 MR. SORKIN: Let him finish the answer, your  
25 Honor.

mbb-4

Bonavia-cross

1  
2 MR. GOULD: He said no, sir, that is an answer.

3 A Sir, I never said the FBI had these statements.  
4 I voluntarily had these statements made by a court reporter  
5 to send to my attorney in Zurich, Switzerland, on my lawsuit  
6 on Training With the Pros.

7 THE COURT: You mean to send to Dr. Stucki?

8 THE WITNESS: Yes, sir.

9  
10 THE COURT: All right.

11 Q I want to know, sir, if you have copies of any  
12 of the statements you gave to the FBI, that you say you gave  
13 to the FBI.

14 A I didn't give them any statements. They took  
15 the statement.

16 MR. GOULD: If your Honor please, in view of that  
17 subpoena, I doubt very much that I can finish this afternoon,  
18 and I would greatly prefer not to try. I do want to question  
19 the witness further about that subpoena.

20 THE COURT: All right. Gentlemen, I would like  
21 all the parties and counsel to come in tomorrow at 9:30 if you  
22 would, and as you understand from the previous conversation  
23 today, we are trying to speed up things a little bit by  
24 starting earlier, and I want to rule on that open matter  
25 which you all know about, tomorrow morning.

mbb-5

Bonavia-cross

Now ladies and gentlemen of the jury, I wonder, would you be willing to come in at a quarter to 10:00 tomorrow? We are struggling to make as much headway as we can, and unfortunately there have been these interruptions which are necessary and proper, and I don't mean to quarrel with them, but by the same token the lawyers are interested in joining me in seeing what we can do to make up the time when we have to lose these days, so it is in that spirit that I ask you.

Would it inconvenience anybody to come in tomorrow at a quarter to 10:00, and then maybe on Monday we could come in at 9:30 with your agreement.

You think about that and I will discuss it with you tomorrow. But I think if you come in at a quarter to 10:00, we can get started then. I have to take up and make a ruling on a technical problem of evidence, which counsel know about, and that will take us about 15 minutes, I would guess.

Very good, we will see you tomorrow morning at 9:45. Mr. Bonavia, could you be here at 9:15 tomorrow?

THE WITNESS: Yes, sir, I can.

(Adjourned to Wednesday, September 25, 1974,  
at 9:30 A.M.)

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WITNESS INDEX

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